

	Encouraging Responsible Use of Scottish Water Assets	Version: External (Dec 2016)
		Approval Date: 08/11/2016
		Approved by:
		Owner: Business Strategy and Policy

Introduction

The Land Reform (Scotland) Act (LR(S)A) 2003 established a statutory framework of public access rights to most land and inland water¹. Under the LR(S)A Scotland's Local Authorities and National Park Authorities are the access authorities in their areas, with a number of specific duties and powers under the Act. The Scottish Outdoor Access Code (SOAC) published by Scottish Natural Heritage (SNH) details all access rights².

Clear provisions for the general public and land owners are established in the LR(S)A. The main provisions relevant to Scottish Water from the LR(S)A are outlined in Appendix 5 and for the general public in Appendix 6.

Scottish Water's original Public Access to Land and Water policy was published in May 2005 to address the implications of the LR(S)A for Scottish Water, implications of the Water Industry (Scotland) Act 2002³ Sections 52(1), 53(1) and 53(2) and to provide the basis for the management of access to Scottish Water sites.

The comparable Act in England and Wales is the Countryside and Rights of Way Act, (2000); albeit this Act is significantly different and does not extend to all land, inland water or activities such as cycling and horse riding.

Objectives

The document provides a revised Scottish Water Public Access to Land and Water policy. This policy does not cover the new obligations for Scottish Water imposed by the passing of the Community Empowerment (Scotland) Act 2015, which introduced the right for community bodies to request Asset Transfers, i.e. potential ownership, lease, or use, of land and buildings within Scottish Water ownership. These obligations are covered in a separate policy.

In developing a revised policy for Public Access to Land and Water we have sought to develop principles which meet our three criteria of being **clear**, **coherent** and **credible**, and which:

- a) Are cognisant of Scottish Water legislative requirements
- b) Recognise the importance of providing managed public access
- c) Enable the public to enjoy Scottish Water's land and water assets as applicable under the LR(S)A 2003
- d) Recognise the opportunity Scottish Water has to make a substantial contribution to public enjoyment of Scotland's outdoors
- e) Implement lessons learnt from ten years of implementation of the policy
- f) Balance the provision of access to applicable land and water areas with Scottish Water core duties, risk management, operational practises and safety campaigns
- g) Highlight specific areas of risk: water quality (WQ), safety and security
- h) Provide guidance on our approach to the management of ongoing commercial activities and partnerships

Policy Principles

The policy development has been mindful of Scottish Water's principal responsibilities to provide high quality drinking water and treat waste water and Health and Safety Duties for our operators and the general public. The management of land and water in the catchments of drinking water supply reservoirs is aimed at preventing pollution and protecting water quality and the service we supply to our customers. This remains the highest priority for Scottish Water.

¹ A review of the legislative journey <http://www.outdooraccess-scotland.com/The-Act-and-the-Code/Legislation-history>

² <http://www.outdooraccess-scotland.com/>

³ <http://www.legislation.gov.uk/asp/2002/3/section/52> Clause 52(1)

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As large bodies of open water incorporating built infrastructure, reservoirs can be hazardous. Public safety is therefore also a major priority and the policy aims at providing guidance and information to those taking access in order to ensure their safety and enjoyment.

General policy principles are outlined here; with specific activities across both land and water outlined in Appendices 1 and 2. Our approach to organised events is outlined in Appendix 3 and to commercial activities and partnerships in Appendix 4.

Under the Public Access to Land and Water policy the following high level criteria should be applicable:

a) Scottish Water supports responsible access to our Land and Water assets where:

i. It is compatible with maintenance of Drinking Water Quality

The majority of Scotland's water is sourced from upland catchments. In many cases, the raw (untreated) water is treated at modern water treatment works. Most of these works can comfortably treat water from reservoirs used responsibly for recreation without any deterioration in drinking water quality.

ii. It offers no security risk to Scottish Water for reasons of National or Public Interest

From time to time, it may be necessary to restrict recreational access for reasons of overriding national or public interest. Such restrictions would not be sought lightly and would arise from the need to protect the public water supply.

iii. It offers limited safety risk to the Scottish Water or the general public

Scottish Water land and water assets can present a number of unique hazards. Scottish Water have statutory obligations under the Occupiers Liability (Scotland) Act 1960, the Health & Safety at Work Act 1974 and the management of Health & Safety at Work Regulations. Scottish Water recognises these obligations in the context of the LR(S)A 2003.

The SOAC outlines that an essential part of responsible access is that the general public take responsibility for their own actions.

b) Exclusions to the LR(S)A 2003 for access for the public to Scottish Water land and water assets are:

- i. Land to the extent that there is on it a building or other structure or works
- ii. Plant or fixed machinery
- iii. Land to which public access is, by or under any enactment other than the LR(S)A 2003, prohibited, excluded or restricted
- iv. Land on which works are being carried out by a statutory undertaker for the purposes of the undertaking

c) Additional obligations for Scottish Water which may preclude public access to some of Scottish Water Land and Water assets are:

- i. Scottish Water's obligations under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. In particular whether there is in place a water use licence for this site and the conditions. This could include, but is not limited to, reservoirs.
- ii. If a reservoir might still be used as a water supply source, with regard to potentially polluting activities, Scottish Water may under the Water (Scotland) Act 1980 create byelaws.
- iii. Additionally, under the Water (Scotland) Act 1980 (Section 75) protection is afforded by making it an offence to pollute (or do something that is likely to pollute) a source of

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water used for human consumption, domestic purposes and/or manufacturing food or drink for human consumption⁴.

In enforcing section 75, and any byelaws made under sections 71 and 72, Scottish Water would have to have regard to rights of access to land established under the LR(S)A 2003 which are exercised in line with the Access code.

In practise obligations outlined under b) and c) exclude any Scottish Water operational assets and built structures (WTW, WWTW, Pumping Stations etc.) and can include, but is not limited to, dam structures as required (where these are not used as a recognised Core Path).

Contact

If you have questions regarding your rights to access Scottish Water land and water assets please get in touch with us through our Contact Centre.

Appendices

Appendix 1: Access to Land policy statements and advice

Appendix 2: Access to Water policy statements and advice

Appendix 3: Events policy statements and advice

Appendix 4: Commercial Activities policy statements

Appendix 5: Land Reform (Scotland) Act 2003: Scottish Water implications

Appendix 6: Land Reform (Scotland) Act 2003: General public implications

⁴ However, this section does not prohibit or restrict methods of cultivation, or use of land, in accordance with the principles of good husbandry; or, the reasonable use of oil tar on a public road, providing the roads authority takes all reasonable steps to prevent the pollution of a source of water.



Quick Links to Policy areas

Access to Land

L1: [Access for People with Disabilities](#)

L2: [Vehicular Access](#)

L3: [Access Gates](#)

L4: [Pedestrian Access](#)

L5: [Cycling](#)

L6: [Horse riding](#)

L7: [Dogs](#)

L8: [Wild Camping](#)

Access to Water

W1: [Access for People with Disabilities](#)

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W3: [Access Gates](#)

W4: [Access to Reservoirs](#)

W5: [Sailing, canoeing, rowing and windsurfing](#)

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Events

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Useful Links

Scottish Outdoor Access Code [here](#)

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Appendix 1: Access to Land

The following policy statements with regard to access land under the ownership of Scottish Water apply:

L1: Access for People with Disabilities

Structures provided by Scottish Water for public access will be designed to be accessible for people of all abilities

Most Scottish Water sites are located in rugged upland terrain. The essential character of these areas means that access can be difficult for people with limited mobility. There is an important distinction between rough open ground and structures such as paths and gates. Paths and gates belonging to Scottish Water will be maintained and be accessible.

Scottish Water will work with its angling tenants to support access for disabled anglers.

L2: Vehicular Access

Vehicular Access will normally be outwith the site boundary

Effective control of vehicular access is an important part of site security arrangements. Arrangements vary between sites but in general, access is managed by secure gates at main access points. Public car parks are provided at some main recreational sites.

Vehicular access can help people enjoy their visit. This particularly applies to community groups, educational visits and people with special needs. Scottish Water will seek to support requests for vehicular access by community, educational or special needs groups. Requests for vehicular access will be considered locally. Decisions will be based on safety, operational, water quality and security considerations.

L3: Access Gates

Scottish Water will work towards making gates accessible to pedestrians, cyclists and horse riders

Gates are necessary to maintain site security, manage vehicular access and control livestock. However, gate design strongly influences accessibility for walkers, cyclists, and horse riders. Scottish Water supports the principle of making gates accessible to a wide range of recreational users.

L4: Pedestrian Access

Scottish Water will support Pedestrian access

There is a long established history of pedestrian access to land managed by Scottish Water. Such access can either be focussed on individual sites or form important parts of longer walking routes.

- ii) As an exception, for safety and security reasons, pedestrian access to offices, depots, treatments works and associated structures will be restricted
- ii) Scottish Water will work with local authorities, National Parks, neighbouring land managers and other interested parties to manage walking as part of integrated path network
- iii) Pedestrian access will be permitted across dams where these form part of established routes

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L5: Cycling

Scottish Water will support cycling on suitable paths

Cycling both on and off paths is within the general right of access under the LR(S)A 2003. There is an established pattern of cycling on paths and tracks used by pedestrians. However, due to surface types and use by other visitors, some routes are more suited to cycling than others.

Cyclists will be encouraged to use particular routes most suited to cycling and where possible new gates will be accessible for cyclists.

L6: Horse riding

Scottish Water will support horse riding on main tracks

There is existing demand for riding access on Scottish Water land. Typically, demand is for short links forming part of longer routes. Historically, access has been limited due to varied land ownership along linear routes.

Horses will be required to keep out of the water at reservoirs, intakes and feeder streams. Where practicable, new gates will be made accessible for horse riders.

L7: Dogs

Scottish Water welcomes walkers with dogs provided dogs are kept under proper control

- i) Dogs must be kept under close control (not disturbing other recreational users, livestock or wildlife)
- ii) Dogs must be kept on a short lead or under close control on enclosed land with livestock
- iii) Dog owners must remove and safely dispose of dog dirt
- iv) Scottish Water may seek support from the local authority and/or the Police, under the provisions of the Dog Fouling (Scotland) Act 2003 to reduce dog fouling at problem sites
- v) Dogs must be kept out of drinking water supply reservoirs
- vi) Dog fouling bins may be provided at sites where fouling is particularly problematical⁵

L8: Wild Camping

Scottish Water will encourage wild campers to avoid reservoir shores and stream intakes

The SOAC defines wild camping as being lightweight, involving small numbers of people usually only staying in one place for two or three nights.

Scottish Water recognises that wild camping helps many people enjoy the outdoors. Camping by individuals for one night, if carried out responsibly, usually has little impact on the environment. However, camping directly on reservoir shores can be problematical. Some reservoirs operate as fisheries, and overnight camping on the shore can make it difficult to effectively control poaching. At drinking water supply reservoirs, there is a risk to water quality in the absence of toilet facilities.

The principles outlined for the public under the SOAC with regard to wild camping⁶ should be adhered to, to reduce risks. In addition Scottish Water encourages wild campers to defecate at least 50m from water and bury faeces in a pit.

⁵ Scottish Water have dog fouling bins at Milngavie Reservoirs (Mugdock and Craigmaddie) where this has been a real issue.

⁶ <http://www.outdooraccess-scotland.com/Practical-guide/public/camping>

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Appendix 2: Access to Water

Inland waters including reservoirs provide ideal conditions for water based activities. This is reflected in the provisions of the LR(S)A 2003 which creates a general right of access for non-motorised water based recreation.

The following policies aim to support the wider right of access to bodies of water under the ownership of Scottish Water while taking proper account of the water quality, safety, and operational considerations unique to reservoirs:

W1: Access for People with Disabilities

Structures provided by Scottish Water for public access will be designed to be accessible for people of all abilities

Most Scottish Water sites are located in rugged upland terrain. The essential character of these areas means that access can be difficult for people with limited mobility. There is an important distinction between rough open ground and structures such as paths and gates. Paths and gates belonging to Scottish Water will be maintained. Also refer to W6: Motorised watersports.

Scottish Water will work with its angling tenants to support access for disabled anglers.

W2: Vehicular Access

Vehicular Access will normally be outwith the site boundary

Vehicular access can help people enjoy their visit. This particularly applies to community groups, educational visits and people with special needs. Scottish Water will seek to support requests for vehicular access by community, educational or special needs groups. Requests for vehicular access will be considered locally. Decisions will be based on safety, operational, water quality and security considerations.

Effective control of vehicular access is an important part of site security arrangements. Arrangements vary between sites but in general, access is managed by secure gates at main access points. Public car parks are provided at some main recreational sites.

Vehicular access up to the edge of reservoirs will generally not be approved for operational, environmental, health and safety and security reasons. Those wishing to take boats, canoes or other craft or equipment to our reservoirs should consider and plan how they will do so without the assistance of vehicles.

W3: Access Gates

Scottish Water will work towards making gates accessible to pedestrians, cyclists and horse riders

Gates are necessary to maintain site security, manage vehicular access and control livestock. However, gate design strongly influences accessibility for walkers, cyclists, and horse riders. Scottish Water supports the principle of making gates accessible to a wide range of recreational users.

W4: Access to Reservoirs

Scottish Water supports individual and group access to water for informal and non-motorised activities

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Access to reservoirs will not require advance notice providing that no special facilities are required.

People enquiring about informal access to water will be advised that:

- The right of access applies to reservoirs
- Individuals, group leaders and participants will be responsible for their own actions
- Scottish Water has appropriate signage at every Scottish Water owned reservoir, highlighting the dangers associated with reservoirs
- Rescue equipment is not provided at reservoirs⁷; we do not encourage swimming or diving
- They must keep away from dams, spillways, water intakes and other built structures
- Particular care should be taken to avoid polluting the water
- Disturbance to other reservoir users and wildlife should be minimised
- Where facilities exist or availability is restricted to certain seasons, extra seasonal availability may be considered by prior request

W5: Sailing, canoeing, rowing and windsurfing

Scottish Water will permit sailing, canoeing, rowing and windsurfing on reservoirs

Scottish Water will permit use of reservoirs for these activities in line with Points W1-W4.

W6: Motorised watersports

Scottish Water does not support the use of motorised craft on reservoirs without special arrangement

The LR(S)A 2003 does not extend the right of access to motorised activities. Motorised activities have the potential for greater impact in terms of noise, water quality and safety.

However, Scottish Water recognises that motorised water sports are a legitimate recreational activity and that at the right location these impacts can be managed. Motorised craft can be essential for either safety (e.g. rescue boats) or accessibility (people with disabilities may require on outboard motor for angling).

Specific arrangements are:

- Electric outboard motors are permitted for anglers and people with physical disabilities. No advance permission will be required
- Internal combustion engines are not permitted unless by special arrangement
- Requests to use internal combustion engines on drinking water supply reservoirs will be considered on grounds of safety, accessibility and water quality; electric motors would be preferred
- Powered safety boats will usually be allowed in conjunction with supervised water sports instruction
- Requests will be considered from organised groups as part of a proposal to make regular and managed use of a particular reservoir. Scottish Water will consult with neighbouring land managers, sporting interests, the local authority and other relevant statutory agencies about any proposals to introduce powered water sports

W7: Swimming

Scottish Water does not encourage swimming in reservoirs

There are several hazards, unique to reservoirs that may not be immediately obvious to visitors. These include, steep sides, underwater currents, deep cold water and dam structures. There is also a

⁷ Rescue equipment is not provided at reservoirs; where it is in existence it will be maintained. However, Scottish Water do not encourage entering our reservoirs and due to the remoteness, the level of supervision provided, and vandalism, it is not practicable to provide rescue equipment at all locations.

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theoretical risk of water contamination because of total bodily immersion. Swimming in reservoirs is a high-risk activity and a potential water quality risk. Notice should be taken of the Take Care, Be Aware and Reservoir Safety signage and Scottish Water campaigns.

W8: Diving

Scottish Water does not encourage diving in reservoirs

The hidden hazards applicable to swimming apply equally to scuba diving (see above). Underwater currents in particular present a high risk to divers. These risks are manageable if diving is undertaken as part of a supervised activity with experienced supervision. Scottish Water will consider requests to dive as part of a supervised group activity at reservoirs not used for drinking water supply.

W9: Fishing

Scottish Water will support managed access to quality fishing at certain reservoirs

Many Scottish Water reservoirs are managed as fisheries. The majorities are leased to angling tenants or managed in partnership with Scottish Water. These are not covered under the LR(S)A 2003. [Note – despite being leased access rights may still apply at these sites, subject to the obligations to exercise rights responsibly and the statutory exceptions set out in the LR(S)A].

Fishing operations will be managed through leases or working partnerships with clubs or commercial operators. Angling tenants will be encouraged to co-operate positively with other visitors who are exercising their right of access responsibly. Angling tenants will be required to manage their operation such that water quality and natural heritage are protected.

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Appendix 3: Events

Events such as sailing regattas, sprint canoe races, and windsurfing competitions can all make use of inland waters. Similarly land based events such as hill races or orienteering can require access to land in the immediate reservoir catchments. Such events often require special arrangements for vehicular access and the use of fixed or temporary facilities; as such the impact on both the environment and other recreational users is likely to be greater compared to informal access.

Scottish Water must adhere to the following principle from the Scottish Outdoor Access Code (SOAC):

'4.22 If you are contacted by the organiser of a group or event (see paragraphs 3.57 to 3.64), reply positively. If your consent is required, you are encouraged to give this if your concerns or those of others can be properly addressed⁸'.

The following policy statements with regard to events apply:

E1: Scottish Water will support (where possible) all reasonable requests for events which require the provision of temporary facilities or special access arrangements.

The event organiser bears sole responsibility for the organisation of such facilities.

E2: Requests for organised events must be received in a reasonable time before the proposed event is due to be held.

In this case 'reasonable' refers to the time periods specified in the SNH publication 'Outdoor events in Scotland: guidance for organisers and land managers⁹'.

E3: Appropriate safety measures must be in place

E4: Appropriate security measures must be in place

E5: Appropriate pollution prevention measures must be put in place

E6: Scottish Water will not be involved in the creation or review of any risk assessments in relation to events being held under the SOAC, and are only responsible for highlighting site specific known risks to event organisers

E6: Scottish Water Access Officer is the customer point of contact

E7: Event requests will be considered by several stakeholders across Scottish Water

The authorisation to permit an event request must be reached as a group involving all stakeholders. In case of contentious issues the request will be escalated to Senior Management.

In the event of an incident occurring that could affect Scottish Water we should be notified without delay using the Customer Helpline number 0800 0778 778 and the local contact if known.

⁸ http://www.outdooraccess-scotland.com/sites/default/files//docs/Scottish_Outdoor_Access_Code_-_Part_4_Managing_land_and_water_responsibly_for_access.pdf

⁹ <http://www.snh.org.uk/pdfs/SOAC/Outdoor%20Events%20in%20Scotland.pdf>

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Appendix 4: Commercial Activities

The Scottish Outdoor Access Code (SOAC) applies only to commercial activities not requiring the use of special facilities.

However, Scottish Water may be approached by other parties (public bodies, charitable bodies, individuals or private organisations) to make commercial use of our land or water assets which fall outwith the remit of SOAC.

The following policy statements with regard to commercial activities apply:

C1: Commercial operators requiring the use of existing facilities (e.g. toilets, car parks or slipways) or special arrangements for vehicular access will require advance permission from Scottish Water

C2: Regular commercial use of Scottish Water facilities (e.g. toilets, car parks or slipways) will be managed through formal agreement and lease (as applicable)

C3: Scottish Water will consider any commercial proposal for activities utilising our Land and Water assets

Scottish Water reserve the right to refuse any commercial activity in line with our core statutory obligations.

C5: A formalised agreement/lease for any commercial activity utilising Scottish Water land and water assets will be established

C6: The following assets are excluded from consideration for commercial use:

- a) Reservoir structures; including embankment or dam, valve tower, bridge valve tower, spill-weir, spillway and outlet tunnel
- b) Operational site and built structures including, but not limited to WTW and WWTW
- c) Typically commercial activities should be focussed on non-operational reservoirs; Scottish Water will consider requests on other reservoirs as appropriate

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Appendix 5: Land Reform (Scotland) Act 2003: Scottish Water implications

The Land Reform (Scotland) Act 2003 established a general right of recreational access to land and water. The right of access also extends to educational activities and certain commercial activities where the activity falls within access rights e.g. walking or canoeing.

Central to these access rights, is the requirement that both visitors and land managers act responsibly. Detailed guidance about access rights and how they can be exercised and managed responsibly is provided in Scottish Outdoor Access Code (SOAC) developed and published by Scottish Natural heritage (SNH)

The main provisions relevant to Scottish Water are that access rights:

- a) Extend to land and water;
- b) Extend to reservoirs;
- c) Apply to non-motorised activities including walking, dog walking, cycling, horse riding, sailing, canoeing, rowing, windsurfing, swimming and diving;
- d) Do not apply to hunting, shooting or fishing;
- e) Do not apply to built structures (such as dams)¹⁰, works, plant or fixed machinery
- f) Do not apply to operational sites or land upon which works are being undertaken by, or on behalf of Scottish Water for the purposes its statutory water and sewerage undertakings;
- g) Apply to commercial activities not requiring the use of special facilities; *
- h) Apply only where they are exercised responsibly; and
- i) As a land manager and public body, Scottish Water has a duty to work positively to help people enjoy recreational access.

* Approaches to Scottish Water for ongoing commercial activities associated with the use of Land and Water Assets are dealt with in Appendix 4

¹⁰ However, owners are encouraged to support access across dams if there are no specific safety issues

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Appendix 6: Land Reform (Scotland) Act 2003: General public implications

The main responsibilities for the general public are that access rights must be exercised responsibly.

The main responsibilities for the general public (as applicable to Scottish Water Land and Water assets) are:

- **Take responsibility for your own actions** - e.g. care for your own safety, keep alert for hazards, take special care with children.
- **Respect people's privacy and peace of mind** - e.g. do not act in ways that might annoy or alarm people, especially at night.
- **Help land managers and others to work safely and effectively** - e.g. keep clear of land management operations like harvesting or tree-felling, avoid damaging crops, leave gates as you find them.
- **Care for your environment** - e.g. don't disturb wildlife, not causing any pollution and by taking all your litter away with you.
- **Rivers, Lochs and Reservoirs-** Access rights extend to rivers, lochs and reservoirs (but never go close to spillways or water intakes). Care for the interests of other users and for the natural heritage of rivers and lochs by: not polluting the water as it may be used for a public water supply.
- **Keep your dog under proper control** - dogs are popular companions, but take special care if near livestock or during the bird breeding season, and always pick up after your dog.
- **Take extra care if you are organising an event or running a business** – e.g. talk to the managers of any land which you may plan to use intensively or regularly.

These are summarised in the Scottish Outdoor Access Code (SOAC) Part 3 Exercising Rights Responsibly:

http://www.outdooraccess-scotland.com/sites/default/files//docs/scottish_outdoor_access_code_-_part_3_exercising_access_rights_responsibly.pdf