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## ***A Practical Guide to the Right to Roam in Scotland***

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**(Law Brief Publishing) £49.99**

This book declares itself to be a practical guide to the ‘right to roam’ in Scotland. It generally meets its own description. Its author has some experience of litigating under Part 1 of the Land Reform (Scotland) Act 2003 (‘the 2003 Act’), where the statutory framework for public access rights to the outdoors can be found. That legislation is the primary focus of the text.

The text begins by noting it is a self-contained resource. It nevertheless points to alternative sources at the outset for those wishing additional reading, after which it does indeed operate as if the book will be the sole reference point and no further secondary sources are referred to. For any readers who do wish to dig deeper about any issues discussed or alluded to in the text this might serve to hamper further study, or maybe even underplay what are points of debate as regards the law’s application.

The book has thirteen chapters, some of which are very short indeed. (Chapters 9 and 11 are not even two pages of A5.) After a short introductory chapter, Chapter Two – ‘Definitions and Terminology’ – is largely a copy and paste of some (but not all) of the interpretation section of the 2003 Act. This might assist a notional reader who is solely reliant on this book and without the text of the statute or access to [legislation.gov.uk](http://legislation.gov.uk), but otherwise I was not too sure of the added value of this approach.

Chapter Three – ‘Access Rights’ – starts by briefly setting out the pre-2003 Act position, outlining the underlying civil and criminal law. Here, the first of the book’s intermittent asides is found, in this case an interesting titbit about the lack of any reported cases under the Trespass (Scotland) Act 1865. Attention then turns to the 2003 Act. This coverage begins with a discussion that limited commercial purposes might include taking photographs (I agree, and so does Douglas Cusine – a reference to his article ‘Access for photography’ (2017 SLT (News) 21) could have fortified this point). Then it is noted such purposes might include operating a drone (p 8): they might, but then again, they might not. Indeed, some landowners have attempted to levy a charge of those flying drones, plus the UK Civil Aviation Authority has quite a lot to say about unmanned aircraft system operations in UK airspace. A nod towards such issues might have been sensible. The rest of this chapter is largely statutory extracts, setting out the 2003 Act ss 1, 2, 3, 9 and 6. There is no reference to its s 7 at this first mention of excluded land, which is perhaps strange given just how much it supplements the exclusions in s 6. Admittedly s 7 of the 2003 Act is returned to at pages 46, 47 and 51 in the context of the exclusion zone around a dwelling, but to not draw attention to its important terms both sooner and in context feels like an omission.

Chapter Four – ‘Enforcement of Access Rights’ – simply extracts the 2003 Act’s ss 13 and 14 after a brief scene-set, without any particular annotations. Chapter Five considers the Scottish Outdoor Access Code. Again, this has a lengthy extract of statutory material, in this case from the 2003 Act’s s 10. (Section 10(1) has the honour of being quoted twice in the book (at p 21 and p 47).) While this chapter did allow some of the author’s wisdom to shine through, I found the huge extract from the *Gloag v Perth & Kinross Council* (2007) S.C.L.R. 530 case a bit distracting. A minor quibble of this approach to a quotation is it brought unintroduced personalities into the discussion with little context. More importantly though, some of the extract was perhaps a tad misleading, given John Lovett’s convincing critique of this aspect of the sheriff’s ruling (see ‘Progressive Property in Action: The Land Reform (Scotland) Act 2003’ (2011) 89 Nebraska Law Review 739).

Chapter Six – ‘Core Paths and Paths’ – begins with a discussion of the core path regime created by the 2003 Act. It might have been helpful to set out clearly the significance of core paths, namely that they

are almost always subject to access rights in terms of s 7(1). The author's approach is to first explain what happened when core paths were introduced when the 2003 Act came into force (namely local authorities or, where relevant, national park authorities had to draw up a system of paths to afford appropriate access for their area), and how such schemes can be amended. It then launches into discussion of the recent case of *Gartmore House v Loch Lomond & the Trossachs National Park Authority* [2022] CSIH 56 (see also, for instance, (2023) 215 SPEL 17). I am afraid to say that this approach did not work in my opinion. After the four paragraphs that began the chapter, it then copies or adapts (without quotation marks) the text of Lord Carloway's judgment (including much of para 3 (verbatim), paras 8-11 (with some slight changes), then paras 31-34 (with some slight changes)). Of course, there is no attempt to pull the wool over the reader's eyes here: the case is clearly introduced and referenced, but the approach also served to lasso some wording from the judgment into s 149 of the Equality Act 2010 in a way that could be confusing. This passage should have been reworked more carefully, or quotation marks around actual extracts should have been deployed.

The short Chapter Seven – 'Rangers and Local Access Forums' – again follows the pattern of statutory extracts, alongside some welcome but brief commentary on the utility of local access forums. Chapter Eight – 'Case Law' – takes readers through most of the key cases that have shaped the application of the legislation up to the book's publication. Owing to the case-by-case approach that is adopted, the coverage in this chapter veers from topic to topic. This does serve to highlight what sort of issues can arise in an access dispute and, in that sense, it may be a practical guide for practitioners. Thinking of any non-practitioners who pick up this book though, the discussions around human rights are introduced without much explanation (in relation to Arts 6, 8 and 35 and A1P1 of the European Convention on Human Rights). A certain amount of background knowledge would be needed before this part of the text could be relied on in isolation.

Chapter Nine – 'Animals' – and Chapter Ten – 'Occupiers' Liability' both brought consideration of other legal regimes that can interact with the right of responsible access. I found this diversion instructive, and I met a couple of cases that I do not think I have interacted with previously. I was a tad confused by the concepts of 'self-defence of another' and 'self-defence of other livestock' though, which were introduced as two of the three possible defences in civil proceedings brought against a person for killing or injuring an animal in terms of s 4 of the Animals (Scotland) Act 1987 (at the end of p 55). Things got worse with the paragraph where this occurred owing to a legal error, where it is reported that the killing or injury must be reported to the police within 24 hours; the stipulated time is, actually, 48 hours.

The short Chapter Eleven – 'Dispute Resolution' – returns to local access forums and the role they might play before full-blown litigation. Mediation is also flagged appropriately, with the organisation Scottish Mediation signposted as a resource. Reference might also have been made to the 2020 National Access Forum Guidance Note on the Use of Mediation for Access (available at <https://www.outdooraccess-scotland.scot/doc/guidance-note-use-mediation-access>).

Chapter Twelve – 'Court-Summary Application' – is one of the book's strongest points. The content in this chapter (together with Appendix One – 'Summary Application and Answers') offers something different to existing resources on the right of responsible access. The guidance in Chapter 12 about how to prepare for an action, productions and the possible role of expert witnesses will give food for thought to anyone embarking on their first case under the 2003 Act. A slight criticism might be made of the elevation of the expert evidence in the *Gloag* case that related to the security concerns of a particular occupier in the context of the privacy zone around a dwelling in terms of s 6(1)(b)(iv) of the 2003 Act. This is because case law and analysis since that decision suggests that the better view is to discard a particular occupier and instead apply what Lovett calls a 'property-specific objective test' that relies more on the views of a notional occupier (all in line with s 7(5) of the 2003 Act). That aside, the experience of the author has been deployed effectively in this chapter. A similar compliment can be paid to the appendix. The pleadings in the appendix could be a practical help to someone litigating a case, and could perhaps even be deployed on a litigation module on the Postgraduate Diploma in Professional Legal Practice.

There are roughly 100 A5 pages of substance in this book. It lacks a table of cases, a table of statutes and an index, but it presents a generally accessible resource that engages with issues that have arisen in court so far. There are a couple of flashes of humour, which readers can form their own views of: I enjoyed the matador chat, and a bit of fun was had with adders in the pleadings in the appendix, but I was less taken by the speculation about panthers.

There are some points that could have merited deeper consideration: for example, the law relating to golf courses might have been explained more. The text at p 61 adverts to golf courses being excluded from access rights, but it should be recalled there is expressly a right to cross these in terms of the 2003 Act.

That discussion of p 61 is relevant for another reason. It contains an error: the reference to section '9(f)' should be to '9(g)'. While a reviewer should never be unduly picky, and conscious as I am that the casting of stones should be reserved for those who are without sin, this book suffers from numerous errors. There are many more beyond those already highlighted. Generally speaking, these are not fundamental and the author's meaning is clear, but they are distracting. The 2003 Act, s 6(1)(b)(iv) is incorrectly referenced on a number of occasions, and in a number of ways: on p 47 – within an extract of a statute – it is inexplicably called 'section 6(1)(b)(vi)'; on p 77 it becomes 'section 6 (1) (iv)'; and on p 80 it is '6(b)(iv)'. On p 35 what I presume was a missed shift key has led to a reference to section '2297' rather than '22(7)', then in the same sentence what might be a copy and paste hangover refers to 'this Part' rather than 'Part 1'. There are also a few occasions where a square bracket appears in statutory text (presumably because of parenthesis that surrounded a legislative amendment, such as on pp 72 and 73). The last paragraph of p 74 appears to have a missing word, then concludes with some circularity that there can be a further appeal from the Sheriff Appeal Court to the Inner House of the Sheriff Appeal Court. Other minor errors that a more careful edit would have caught include an extra 'is' on p 22, an extra 'that' on p 59, and a 'quad ultra' on p 97, to name but a few. It is disappointing that so many of these issues made it to press.

The finished product is something of a mixed bag. There are aspects which are useful, and there are aspects that could be improved. The book does serve a purpose though, meaning that a qualified endorsement can be made.

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