

RIGHTS OF WAY IN SCOTLAND

Many people are unaware that there are rights of way in Scotland: they are not marked as such on Ordnance Survey maps, and most of them are not signposted. However, there is quite a large number of rights of way, and they currently provide virtually the only form of linear access to the countryside which is (potentially) legally enforceable. This note explains the background to rights of way in Scotland.

What is a right of way?

A right of way is a route along which the public have a right of passage. To be a right of way, a route must meet certain conditions. The main ones are that the route must have been used by the public for at least twenty years, it must connect two public places, and it must follow a more or less defined route. Rights of way vary in length from short urban routes (the average length of rights of way in Dundee is less than 1 km) to longer traditional routes, such as the old drove roads. Rights of way on land have a different legal basis from rights of navigation on inland water.

How is a right of way established?

A right of way is established through the collection of sufficient evidence to show that the route meets the accepted conditions for such status, and this evidence can be used to assert that the route is a right of way, either to secure acceptance of the way by all the interests, or through court action.

Unfortunately, there is often doubt about the legal status of rights of way, and they are sometimes hotly contested by landowners. Local authorities have the power to establish the legal status of a right of way through court proceedings (called an action of declarator), but they are often reluctant to take right of way claims to court as cases can take years to resolve, at enormous cost and effort. It can also be difficult to find enough witnesses ready to appear in court to prove twenty years use. Another problem is that even long-established rights of way can be challenged by land owners on the basis that the route has not been used for 20 years. Evidence would then need to be collected to show that use had occurred within that period.

Are any records of rights of way kept?

In England and Wales, highway authorities have a duty to maintain legally recognised maps of rights of way, called definitive maps. These rights of way are then shown on Ordnance Survey maps. There is, therefore, no doubt about whether or not a route is a right of way. Furthermore, rights of way do not cease to exist merely through lack of use.

In Scotland, however, different legislation applies and there is no legally recognised record of rights of way. The best record at a national level is the National Catalogue of Rights of Way (CROW) which has been compiled by the Scottish Rights of Way and Access Society (Scotways), in partnership with Scottish Natural Heritage and with the co-operation of local authorities. The

national record is maintained by Scotways. Local authorities each hold a copy of their local CROW records. See the appendix for a summary of the CROW statistics.

Are there different types of rights of way?

CROW classifies rights of way into three status categories:

- vindicated – routes declared to be rights of way by the courts or through another legal process;
- asserted – routes which have been accepted as rights of way by the landowner or where local authorities have indicated that they would take legal action to protect them if necessary;
- claimed – other routes which appear to meet the common law conditions necessary to be regarded as rights of way, but which have not been formally vindicated or asserted.

CROW was based largely on information gathered from local authorities. Local authorities have differing policies on rights of way and this means that the amount and quality of the information varies throughout Scotland (see Appendix). Some local authorities have adopted a policy of compiling records of rights of way only after going through a formal assertion process for each route involving, for example, consultations with local communities and landowners followed by an assessment of the evidence for and against legal status. Others have compiled lists of all claimed rights of way, with little attempt to verify their legal status.

In view of the effort required to assert a route, and even more to vindicate it through court action, it is not surprising that the vast majority of rights of way fall within the “claimed” category with only a tiny number of vindicated routes:

- claimed: 84% of the total
- asserted: 15% of the total
- vindicated: 1% of the total

There are also different categories of use of rights of way: pedestrian, vehicular and equestrian. The category of use depends on the type of use made of the route by the public over the 20 year period, and for which evidence is already available, or can be collected, by the local authority. For example, a route that is used by horse-riders for at least 20 years could become an equestrian right of way. Greater uses include lesser ones so that, for example, vehicular rights of way can also be used by horses and pedestrians.

The question of the use of bicycles on rights of way has caused difficulty. An early court case suggested that cyclists could use all pedestrian rights of way, but there is now doubt about this. The more accepted view is that use by bicycles is another category of right of way, so that 20 years use could establish the right to use a route by bike.

CROW records the different categories of use of rights of way. However, it is only recently that local authorities have started to record this kind of information and so the records of use are incomplete and variable. The majority of rights of way fall

into an “unspecified” use category (50.5%). 43% are recorded as pedestrian only, 4% are categorised for horse use, 2% for vehicular use, and less than 1% are known to be cycling routes.

How many rights of way are there in Scotland?

CROW records almost 7,000 rights of way, with a total length of 15,000 km. The average length of a right of way, therefore, is only just over 2 km. The information in CROW for each local authority is summarised below. Further information on the provision of paths in Scotland can be found in *The provision of paths in Scotland* (SPICe Note xx).

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Appendix

Summary of CROW Statistics

All Routes

Total number of recorded routes: 7,627

Total length of recorded routes: 16,563.7 km 10,292.7 miles:
Average length of recorded routes: 2.2 km 1.4 miles:

Other Routes

Total Number: 654

Total Length: Average Length:

1,394.3 km 2.1 km
866.4 miles 1.3 miles

Rights of Way

Total Number: 6,956

Total Length: Average Length:

15,154.0 km 2.2 km
9,416.7 miles 1.4 miles

Status (all routes)

Status	Total Routes	Average length		Total length		Percentage of total routes
		km	miles	km	miles	
Asserted	1,061	1.55	0.97	1,645.17	1,022.31	13.91%
Claimed	5,804	2.29	1.42	13,279.20	8,251.69	76.10%
Lost	17	0.91	0.57	15.50	9.63	0.22%
Other Route	654	2.13	1.32	1,394.26	866.39	8.57%
Vindicated	91	2.52	1.57	229.60	142.67	1.19%

User Category (all routes)

User Category	Number	Average Length		Total Length		Percentage of total routes
		km	miles	km	miles	
Cyclist	60	2.94	1.82	176.19	109.48	0.79%
Horse	290	2.08	1.29	602.28	374.26	3.80%
Pedestrian	3,281	1.88	1.17	6,181.19	3,840.99	43.02%
Unknown	3,854	2.44	1.52	9,408.23	5,846.27	50.53%
Vehicular	142	1.38	0.86	195.84	121.70	1.86%

Rights of Way - User Categories

User Category	Total	
Cyclist	38	0.55%
Horse	281	4.04%
Pedestrian	2,909	41.82%
Unknown	3,588	51.58%
Vehicular	140	2.01%

Rights of Way - Status

Status	
Asserted	15.25%
Claimed	83.44%
Vindicated	1.31%

Rights of way by local authority

This table illustrates the wide range of rights of way provision in different local authorities. There are rights of way that are not recorded and therefore do not appear in the statistics. Work on the catalogue is continuing and it is constantly updated.

	Number of rights of way	% of total	Total length (km)	% of total	Average length (km)
Aberdeenshire	441	6.3	949	6.3	2.2
Angus	66	1.0	225	1.5	3.4
Argyll & Bute	202	2.9	679	4.5	3.4
City of Aberdeen	25	0.4	48	0.3	1.9
City of Dundee	7	0.1	5	0.1	0.7
City of Edinburgh	132	1.9	171	1.1	1.3
City of Glasgow	22	0.3	26	0.2	1.2
Clackmannanshire	51	0.7	78	0.5	1.5
Dumfries & Galloway	641	9.2	1793	11.9	2.8
East Ayrshire	213	3.1	387	2.6	1.8
East Dunbartonshire	98	1.4	88	0.6	0.9
East Lothian	225	3.2	317	2.1	1.4
East Renfrewshire	60	0.9	58	0.4	1.0
Eilean Sar	19	0.3	81	0.5	4.3
Falkirk	182	2.6	269	1.8	1.5
Fife	1257	18.1	1317	8.7	1.1
Highland	539	7.8	3334	22.0	6.2
Inverclyde	20	0.3	41	0.3	2.1
Midlothian	174	2.5	250	1.7	1.4
Moray	112	1.6	310	2.1	2.8
North Ayrshire	56	0.8	171	1.1	3.1
North Lanarkshire	184	2.7	216	1.4	1.2
Orkney	138	2.0	145	1.0	1.1
Perth & Kinross	386	5.6	935	6.2	2.4
Renfrewshire	51	0.7	42	0.3	0.8
Scottish Borders	757	10.9	1867	12.3	2.5
Shetland	<i>Rights of way not currently recorded</i>				
South Ayrshire	36	0.5	94	0.6	2.6
South Lanarkshire	307	4.4	462	3.1	1.5
Stirling	310	4.5	470	3.1	1.5
West Dunbartonshire	58	0.8	78	1.6	1.3
West Lothian	187	2.7	246	1.6	1.3
TOTAL	6956		15152		1.9

(Catalogue of Rights of Way, 2001)

