

**POLICY ON SECTION 11 EXEMPTION ORDERS
UNDER THE LAND REFORM (SCOTLAND) ACT 2003**

POLICY ON EXEMPTION ORDERS

Introduction

Under the Land Reform (Scotland) Act the public are entitled to a right of responsible access to a wide variety of land and in-land water. Section 11 of the Act provides a mechanism for local authorities, whether on application from third parties or at their own initiative, to exempt a particular area of land from access rights for a particular purpose and for a short period of time.

The powers in Section 11 are intended to address a number of situations, which range from small to events such as local village fetes, agricultural shows and larger more organised events such as the golf Ryder Cup. The Council will consult the owner of the affected land on the proposed Order and any Order which excludes land for six days or more will require public consultation and Ministerial confirmation. All Orders granted must be notified to the public and an Order has effect for a maximum of two years unless re-enacted.

Justification for Orders

Where an event is to be held on land over which access rights can be exercised, there may be a need to exclude the land from access rights for the duration of the event, and possibly periods immediately before and after.

In general the reasons for exemptions under section 11 should be limited to:

- Allowing a charge to be levied for admission to a particular event
- In the interests of safety and security
- Ensuring the protection of privacy, where the provisions of section 6 of the Act are not deemed sufficient in individual circumstances and the local authority considers the exclusion necessary

Please note that where an entry fee is to be levied it is not envisaged that an Order will be required for all such events. It is envisaged that orders should only be considered necessary where:

- There is considered likely to be a problem in imposing a charge for entry from those attending that an order should be considered necessary
- There is a requirement to enforce the exclusion of land from access rights

Please also note that it is the decision of the individual or organisation as to whether or not they apply for an Exemption Order however they should be aware that they will be unable to enforce a charge for access to an event without such an Order.

Examples of circumstances where exemption would not usually be considered include:

- Reasons of land management as the Act provides sufficient exclusions and further guidance on the responsible exercise of access rights over agricultural land is provided in the Code
- Large country houses or estates seeking an extensive exclusion for their whole estate well outwith any reasonable expectation of what is needed for privacy
- An area of land that is already subject to some management measure prohibiting or restricting access, e.g. where an existing byelaw is in place that deals with the issue
- Where a charge for admission is proposed and the charge is for entry only and not for an event

Protocol for applications

All applications must be lodged with North Ayrshire Council and should be received in advance of the recommended minimum periods to enable processing. All applicants are required to complete the Short-term Access Rights Exemption Orders application form, copies of which are available from:

- The Council's Access Officer
- The Council's website via the URL address www.north-ayrshire.gov.uk/outdooraccess

Please note that the application process will be subject to an administration fee as highlighted in **Appendix A**. This charge covers the administration of the application and the cost of the Public Notice(s) required under the terms of the Act. The guidance notes for the completion of applications is provided in **Appendix B**.

Types of applications

Please note that your application form should highlight which of the two types of applications you are submitting for consideration, namely:

1. Applications for 5 or less days
2. Applications for 6 days to 2 years

1. Applications for 5 or less days

The Council's Development and Promotion Service will process applications where they meet the following criteria:

a) That the application submitted demonstrates that the Exemption Order:

- Is for the purpose of allowing a charge to be levied for an event
- Is required as there are no other reasonable alternatives available
- Is for the minimum period possible
- Is supported by the local community

b) That application demonstrates that proposals have been fully investigated and provisions have been made for:

- The reinstatement of any footpaths or access rights affected by the closure
- The diversion of access users
- The signage of closure

Where applications do not meet these requirements they will be subject to consultation through the Core Group of the North Ayrshire Outdoor Access Forum (the statutory Local Access Forum as defined by the Act) and approval or refusal will be obtained through the Council's Committee process.

Please note: all applications for 1 to 5 day(s) exemptions should be received at least **8 weeks** in advance of the proposed closure. This is to ensure sufficient time for the application to be considered by a Council Committee, should the requirement arise.

2. Applications for 6 days to 2 years

Any Order, which proposes to exclude land for six days or more, will require Ministerial confirmation. It should be noted that in the case of applications for 6 days or more two public notices are required, one on application for public consultation and one on granting of the Order. Longer exclusions could relate to entry charges for an event lasting several days or to a permanent visitor attraction. There may be a need to have a mechanism to introduce entry charges where there has been no charge in the past.

This might be needed so as not to undermine the ability of organisations such as the National Trust for Scotland to agree to take on new properties if there is no facility to charge visitors in Order to offset the costs of upkeep of the property. There may also be circumstances where private landowners wish to establish a new business venture such as, for example, a Country Park or arboretum. Another example might be an archaeological site of particular cultural heritage value, which could possibly become an important local visitor attraction.

In these cases, applications will be addressed on an individual basis by the Council and will follow the good practice guidance set by the Scottish Executive. Please note that the guidance highlights that it is likely that only in a very few circumstances is an Order likely to be considered appropriate. As it is the duty of local authorities under the Act to uphold access rights, the power to exempt land for access rights under this section of the Act will be used sparingly and applied in respect of the minimum area of land and for the minimum period necessary.

The Council will provide the Scottish Ministers with copies of all objections or representations received on the proposed Orders and furnish with them necessary information to assist their decision. Applicants should note that they are required to demonstrate within their application that:

- Where a charge is to be levied for admission that the charge is necessary to the viability of the proposed event /activity
- The loss of public access can be justified in terms of other benefits to the local community
- Adequate consideration has been given to the demand for access in the area affected by the proposed Order
- Consideration has been given to the provision of alternative routes
- The purpose and effect of the Order is clearly defined and is proportionate to the issue it seeks to address

Please note: It is advised that all applications for exemptions of 6 or more days should be received at least **6 months** in advance of the proposed closure to enable processing. The Scottish Executive will decide on the outcome of these applications and it is not possible to anticipate the exact time period required for this process. Once an Order is confirmed the Scottish Executive will inform the Council by letter and a Public Notice will be placed advising that the Order has been granted.

Further information

For further information and guidance on exemption orders and completion of the application forms, please contact the Access Officer at:

North Ayrshire Council
Development and Promotion
Perceton House
Irvine
KA11 2DE

Telephone: (01294) 225198
Fax: (01294) 225136
E-mail: lkirk@north-ayrshire.gov.uk
Website: www.north-ayrshire.gov.uk/outdooraccess

For further information on the Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code please contact the Access Officer or visit www.outdooraccess-scotland.com

Or contact Scottish Natural Heritage at:

19 Wellington Square
Ayr
KA7 1EZ

Telephone: (01292) 261392
Website: www.snh.org.uk

Appendix A: Schedule of charges

Please note that the charges highlighted below relate to the cost associated with the production and publication of a public notice for the relevant local newspapers. This is required under the terms of the Act and is therefore not negotiable.

Applications will be addressed in relation to the 5 Action Areas identified in the North Ayrshire Outdoor Access Strategy as identified below:

- Isle of Arran
- Irvine and Kilwinning
- Garnock Valley
- North Coast & Cumbraes
- Three Towns – Stevenston, Saltcoats and Ardrossan

Please contact the Access Officer if you require clarification of which area the proposed Exemption Order site is incorporated into.

Please note that the Council will set an alternative fee where an application is on or close to the boundary of one or more of the Action Areas. This will be determined by whether or not a public notice needs to be placed in more than one newspaper and determination of the fee will be carried out on an individual basis.

Action Area	Local Newspaper	Cost of application	
		1 – 5 days exemption	6 days – 2yrs exemption
Arran	Arran Banner	£65.00	£130.00
Irvine & Kilwinning	Irvine Times *	£235.00	£470.00
Garnock Valley	Ardrossan & Saltcoats Herald *	£235.00	£470.00
North Coast & Cumbraes	Largs & Millport	£130.00	£260.00
Three Towns	Ardrossan & Saltcoats Herald *	£235.00	£470.00

Please note that newspapers marked with an asterisk (*) are part of a newspaper group and Public Notices will be included in both the Ardrossan & Saltcoats Herald and the Irvine Times in these cases. All prices include VAT.

APPENDIX B: Guidance Notes

The following notes aim to assist with the completion of the Short-term Access Rights Exemption Orders application form.

Part One: Contact Details

The person named in this section will be the main contact for future communication about the closure and should have a good understanding of the details of the application. Please note if an agent is making the application on behalf of the applicant organisation, written evidence to this effect will be required to that effect.

Part Two: Closure Details

Please complete all sections to ensure that your application can be processed. Please provide a map with the proposed site clearly highlighted. The map should provide an indication of the location of the site. Please note that Ordnance Survey (OS) maps are preferable wherever possible – unclear or hand drawn maps are not acceptable.

The Council is required to consult the landowner in all cases where the applicant does not own the land over which the exemption is requested. It is therefore essential that applicants consult with and obtain the agreement of the landowner.

Part Three: Justification for closure

This section should provide all the necessary information to justify the application, as detailed in the Policy.

Part Four: Declaration

Please ensure that this section is completed as incomplete forms may be returned to the applicant for resubmission.

SUBMISSION:

All applications and fees should be submitted to:

Development and Promotion
North Ayrshire Council
Perceiton House
Irvine
KA11 2DE

Please note that cheques should be made payable to North Ayrshire Council