

## Briefing for the Citizen Participation and Public Petitions Committee on petition PE2060: [Review existing legislation and legal remedies against trespassers](#), lodged by Daithi Broad.

### Brief overview of issues raised by the petition

- [Part 1 of the Land Reform \(Scotland\) Act 2003](#) grants the public a right of access to land and water for educational, recreational and limited commercial purposes, so long as this right is exercised responsibly. In short, this is known as the “right to roam”.
- Whilst this gives a legal right of access, it does not give blanket permission to go anywhere. Exceptions include:
  - Houses and gardens
  - Other buildings
  - School grounds
  - Most land where crops are growing
  - Places which charge for entry
- These rights and responsibilities are detailed in the [Outdoor Access Code](#), which also sets out clearly where access rights do not apply, what to do if you encounter irresponsible behaviour, and potential statutory criminal offences.
- The first port of call for questions about specific issues, or problems should be [local authority access officers](#), who uphold access rights and facilitate access in each local authority and national park.
- [Scottish Government research about attitudes to land reform](#), published in March 2021, found that 56% of respondents were confident about their rights to access different types of land, with 42% not confident. The research suggests that those who lack confidence in these rights still have a good idea about the main principles of responsible access.
- Overall, participants supported current access rights but considered that there should be more education and clarity around respective responsibilities of public and landowners – and what to do in the event of a dispute.

- Lawyers Shepherd & Wedderburn note that many people believe that [the law of trespass doesn't exist in Scotland](#), - which it does. They describe trespass as “entering or remaining on another’s property without permission”, and state:

The law of trespass is underpinned by both common law principles and statute, in particular the [Trespass \(Scotland\) Act 1865](#). It is not only a civil wrong, but trespassing can also give rise to criminal liability.

- [Police Scotland highlight some of the difficulties in applying the law in relation to trespass](#), with key points as follows:
  - Trespass to land is a civil matter and as such the police have no jurisdiction. Under common law, the landowner has a right to re-entry on the land; however the ejection of the trespasser is fraught with danger for the landowner. Initially, the landowner should ask the occupier to leave the land and if they do then all is well. The problems start however, if they refuse to leave.
  - It is also a criminal offence under the Trespass Scotland Act 1865 for a person to lodge in premises, occupy or encamp on any private property, without the consent and permission of the owner.
  - Anything done by a member of the public in exercising their access rights under the Land Reform Scotland Act 2003 does not amount to trespass.
  - The owner of the land could commit several criminal offences if they forcibly remove a trespasser and their property from the land. The best and safest course of action is to obtain a court order, which if breached may then turn into a criminal matter.
  - If the police do attend an incident such as this, they are merely there as observers for any possible criminal offences committed by either party. The police cannot assist in the removal of the trespassers or their property from the land in question.
  - The police do have some powers against larger groups of occupiers if damage has been caused.

**Alasdair Reid**  
**Senior Researcher**  
17 November 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP