

City of Edinburgh Council

Land Reform (Scotland) Act 2003

Section 11 exemption – applicants' guidance notes

Access Rights

The Land Reform (Scotland) Act 2003 establishes a statutory right of responsible access to most land and inland water. Section 6 of the Act lists some areas of land which are excluded from access rights, for example; growing crops, privacy areas around houses (normally the garden), and the curtilage of some other buildings. Land managers should not do anything which prevents or deters people from taking access rights, although there will be times when normal land management activities such as crop spraying or timber operations will affect access. The Scottish Outdoor Access Code gives advice on taking responsible access and on managing land responsibly. More information can be found on the website

www.outdooraccess-scotland.com

Section 11 exemptions

There are times when it may be appropriate to restrict access to areas of land that would normally be within access rights. Section 11 of the Act enables the Council, by order, to exempt an area of land or inland water from access rights. Such exemptions would normally be short term, for the period of an event for instance, but there may be occasions where longer term exclusions will be required.

Reasons for exemptions would typically include:-

- Allowing a charge to be levied for admission to a particular event such as an agricultural show or an outdoor concert.
- In the interests of safety and security, during a major sporting event for instance.
- Ensuring the protection of privacy in particular circumstances, for example during a private function.

Exemptions would not normally be used for:-

- Reasons of land management (there is provision elsewhere in the Act and in the Scottish Outdoor Access Code).
- Providing extensive exclusions around country houses and estates, beyond that reasonably expected for privacy.
- Where a charge would be imposed for access only and not for an event.
- Where access is already restricted by other measures such as byelaws.

Short term and long term exemptions.

- Applications to exempt an area for fewer than 6 days can be assessed and processed by the Council without further consultation, although the Local Access Forum will normally be consulted.
- Applications to exempt land for 6 days or longer require wider consultation and must be referred to the Scottish Executive for ministerial approval. Such orders can be made for a maximum period of 2 years, after which they must be re-enacted.

Factors to consider before applying for an exemption

- Is the area in question within access rights? If the area is not within access rights a section 11 exemption is not required.
- Is an exemption necessary? Some small events or functions will involve only a small area for a short period of time, and will not have a significant impact on access. The majority of people are likely to comply with requests to respect privacy or pay an entry fee, particularly if access takers can be diverted around the area. In such circumstances, where no problems are envisaged, it may be unnecessary to apply for an order to exempt the area from access rights.
- Is the exemption proposed for a legitimate purpose, as detailed above?
- Is the proposed exemption for the minimum area and time necessary?
- How will the proposed exemption affect public access? Taking into account Core Paths, other promoted paths, public rights of way, other path/tracks, public open spaces, other established area access, and general access rights.
- What measures can be taken to alleviate the effect of the exclusion on public access? For instance by signposting diversions around the area or giving directions to alternative area access. The exemption should have no more impact on access than is absolutely necessary.

What information will the council require?

- Name and contact details of the applicant.
- Name and contact details of the landowner, if different.
- Details of the location of the exemption. Either an address, a six figure grid reference, or a location plan.
- Details of the extent of the area to be exempted. Including a brief description and a site plan clearly showing the boundary of the area.
- The date and time the order would come into effect.
- The date and time the order would expire.
- Brief details of the nature of the event and the purpose of the exemption, as would be promoted on the order. e.g. To charge for admission to, To provide for privacy during, To provide for security and safety during
- Supporting information, including details of the nature of the excluded event and reasoning behind the request for an exemption. City of Edinburgh Council will, in particular, require to be satisfied that the proposed exemption is necessary and for an appropriate purpose, that the area of the exemption is no greater than necessary, and that the duration of the exemption is no greater than necessary.
- Details of existing public access to land or water within the area of the proposed exemption. Including Core Paths, public rights of way, promoted paths, other paths, public open spaces, other area access, general access rights.
- Details of any proposed measures to provide for access during the period of the exemption, for instance by providing and signposting path diversions around the site, or giving directions to alternative area access.

How long will it take to process an application?

Applications to exempt land for fewer than 6 days should normally be made at least six weeks in advance. The Council will endeavour to process applications received at shorter notice, but this cannot be guaranteed.

Applications to exempt land for 6 days or more require a formal consultation period, after which they must be confirmed by Ministers. Applications for such exemptions should normally be made at least 28 weeks in advance.

What is the cost of making an application?

The Council charges a fee of £400 for processing an exemption order, this is discretionary based on the impact of the closure on the general public.

Once an order has been made there is a requirement to advertise the order in the press. The cost of this is included in the application fee.

In the case of proposed orders lasting for 6 days or more there is also a requirement to advertise the proposed order in advance of the consultation period. To reflect the two phases required, longer term notices will be charged the £400 fee twice, once for consultation and once for notice if issued.

How to make an application

Applications asking for a Section 11 exemption order under the Land Reform (Scotland) Act 2003 should be made in writing to:-

Outdoor Access Officer
City of Edinburgh Council
Parks, Greenspace & Cemeteries
Hermitage of Braid
69A Braid Road
Edinburgh
EH10 6JF

If you wish to discuss any aspect of applying for a Section 11 exemption please contact the Outdoor Access Officer on outdooraccess@edinburgh.gov.uk

City of Edinburgh Council

Application to exempt land from Access Rights under Section 11 of the Land Reform (Scotland) Act 2003.

Location of proposed exclusion, including 6 figure grid reference. (a location plan should also be attached)	
Description of proposed excluded area. (a detailed plan of the area should also be attached)	
Date and time when the order would come into effect.	
Date and time when the order would expire.	
Brief details of the purpose of the proposed order. <i>e.g. to charge for admission for an event, to provide privacy during a private function, to provide for security and safety during an event.</i>	
Supporting information, including details of the nature of the excluded event and reasoning behind the request for an exemption. <i>(City of Edinburgh Council will, in particular, require to be satisfied that the proposed exemption is necessary, that the area of the exemption is no greater than necessary, and that the duration of the exemption is no greater than necessary).</i>	

Details of existing patterns of public access to land or water within the area of the proposed exemption. (*including Core Paths, public rights of way, promoted paths, other paths, public open spaces, other area access, general access rights*).

Details of proposed measures to provide public information and alternative routes/access during the period of the diversion.