



## *Safeguarding public access in Scotland since 1845*

**LAND REFORM REVIEW GROUP**      Submission of ScotWays

### **Background**

The Scottish Rights of Way and Access Society is the UK's oldest organisation dedicated to promoting and protecting public rights of access.

It keeps the Catalogue of Rights of Way in Scotland.

ScotWays, as a member of the National Access Forum, participated in the consideration of the proposed legislation on statutory access rights which formed Part 1 of the Land Reform (Scotland) Act, (the Act) and it persuaded the Scottish Government to harmonise procedures relating to public rights of way (ROW) and the new statutory access rights. It participated in the consideration of the Scottish Outdoor Access Code (the Code). It has published a legal Guide to Rights of Way and Access.

The submission relates to Part 1 of the Act.

### **The Act.**

The Act has affected the relationship between land and people in Scotland in what is a welcome and enlightened piece of legislation. It gives a general right to the public to enjoy land which is in private and public ownership paying due regard to those who work or own it and the rights of other access takers. It also sets out a new onus on those who own and work it, to manage land responsibly in relation to the public rights of access. The Act sets out where land is exempted from Statutory Access rights. There will always be tensions where different kinds of rights press against each other, but the Act and the Code together try to encourage people to respect the interests of others, and anticipate and react to the situations they meet. That is clear from the Code's considerable efforts to give examples of responsible actions to all the different interests affected by the Act. While the majority have always tried to do so, the minority who did not now have a practical guide.

The Act by its provisions for local access forums aims to give the local community a place in the process of trying to help resolve differences. Our experience is that they take their responsibilities seriously.

There will be a commercial dividend from the work of the Act as people feel more confident about taking access and trips within and into Scotland increase, and economically rather fragile areas have a chance to share in this.

Core Paths are important, providing recreational opportunities near the centres of population and on the disputed urban fringe. They need to be maintained if they are to fulfil their objectives but funding is a problem. They are a vital part of the Scottish Government's health initiative. Powers have been taken to close core paths. It is important to realise that closing a core path will not necessarily close an underlying common law right of passage. These have their own procedures.

## **Improvements.**

These changes have galvanized bodies on the recreation side, the landowning and farming side, and eg canine organisation to update their more specific guidance which will help disseminate such knowledge to their members and others. SNH has done so for visitors.

Industry interests such as wind farms and forestry have been updating their guidance to members. This should reduce the number of notices which prohibit entry when no work is in progress.

## **Difficulties**

### **Railway Crossing**

Network Rail Scotland has a hit list of crossings they want to close on safety grounds. Even more controversially they have adopted a view that rights of way cannot be established over crossings, in underpasses or over bridges in Scotland (unlike England) unless they were rights of way when the railway was built. The attitude as regards statutory rights is similar. This has profound implications for the exercise of rights of passage and general recreation, given long reaches were the crossing was not originally public. It will be important to scrutinize the forthcoming draft legislation on level crossing law.

### **Golf Courses**

There have been moves to exclude golf courses from the limited right of passage but the grounds are common to other owners and it is a case where those who are behaving irresponsibly have no right to be there; it is a matter of enforcement.

### **Wild Camping**

We also take the view that camping by the road and sitting there, does not constitute recreation within the Act. Genuine wild camping should, we agree, be in the wild. The Code suggests it should be time limited. We think there may be a very limited number of places where bye laws are needed to change expectations.

### **Technical matters**

The Act at Section 10(d) may be confusing . It requires SNH to publish advice on responsible management to owners of non access land with regard to access rights on contiguous land. The obligations on land managers under Sec 3(1) apply to owners of access land. Some think Sec3(2) does obligate a manager of non access land . If there is an opportunity to clarify this it should be taken.

The Sec(14) procedures for dealing with obstructions to Access Rights would be improved if the wording of the section were to provide that obstructions existing at the time the Act came in to force can be made the subject of an order to clear it, in the same way as ROWs

Summary Procedures can be used in court cases and that helps reduce costs but these are still prohibitive for most individuals, and voluntary organisations, especially if the opponent is wealthy or a public or quasi public body.

Local and National Park authorities are the bodies with duties to defend rights, but they too find costs expensive. Public Interest case costs when restricted may help the situation

## Enforcement

There remains a small number of people who will not behave responsibly and a small number who will not manage land responsibly in spite of advice and guidance. If a way is not found to enable effective enforcement to be carried out, some of the hopes for a society which abides by the spirit of the Act will not be realised. This requires financial support for Access Authorities.

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