

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

POST LEGISLATIVE SCRUTINY OF THE LAND REFORM (SCOTLAND) ACT 2003

WRITTEN SUBMISSION FROM RAMBLERS SCOTLAND

We welcome the Committee's decision to examine the working of this legislation. Our comments relate to Part 1 of the Act, the Access Rights, more generally known as the Right to Roam legislation.

We consider that the Report gives a good overview of the way in which this legislation has been implemented and agree with the broad thrust of the Report's conclusion which is that this legislation is working well. This is a notable achievement, given the decades of effort that went in to securing rights of access legislation and the public controversy that surrounded the decision to bring such legislation before the Scottish Parliament in its first term. The processes that led to this legislation, including the many years of discussion within the National Access Forum, have demonstrated that the establishment of public access rights over most land in Scotland have been of considerable benefit to a wide range of outdoor recreation interests and been accepted by the vast majority of land managers. As important as the legislation itself is the Scottish Outdoor Access Code, described as "highly regarded" by the Report, and we agree that the Code has worked very well and, while improvements can always be made to such a document, the bulk of this document requires no change.

We hope that the Committee will note this legislation is of world class quality. We are not aware of any other country which has such comprehensive public access rights which are delivering substantial benefits to both those who are taking access to land and those who are managing it. The Report correctly emphasises the links between the Scottish legislation and that of the Scandinavian countries and contrasts this with the more regulatory regime introduced in England and Wales over much more limited areas of land. We are pleased that land use experts from other countries, notably Ireland and New Zealand, have been examining the Scottish access legislation for potential ideas in their own countries.

We have two main concerns when looking forward.

The Report correctly highlights the problem of the costs of litigation that might arise as individuals or organisations defend or pursue access cases through the courts. We are well aware of the increasing concern of local and national park authorities about this and we have our own experience from a number of cases including two where we joined with local authorities in the court actions. In both the cases the outcomes were satisfactory from the point of view of the determination of the extent of access rights. In the case involving Anne Gloag at Kinfauns Castle, near Perth, where the sheriff found in her favour, the amount of

disputed land, around 4 acres of woodland, was relatively small, with most of the 12 acres which were declared to be outwith statutory rights of access composed of buildings and formal lawns. That provided a clear indication to the owners of substantially larger areas of estate ground that they could not expect the courts to grant exemptions on the grounds of privacy to much more than the formal lawns and garden ground in the immediate vicinity of houses. This was also the position taken by the sheriff in the case involving Euan Snowie at Boquhan Estate near Kippen when exemption from access rights was granted to little more than the lawns and a small area of formal garden ground close by the house. This decision went in our favour but was then appealed to the Court of Session but then abandoned by Mr Snowie on the first day.

From a financial point of view, however, the position is far from satisfactory. Such cases pose great risk to charitable organisations such as ourselves, community groups, private individuals, etc, and also restrain local authorities, when dealing with landowners who have far greater financial resources and the capability of continuing these cases to higher courts on appeal. We therefore feel that some modification to the access legislation is desirable to substantially reduce the financial risk of such court actions. This could be achieved perhaps by making each side solely responsible for its own costs and not those of the other side as well if the case is lost. Or some form of arbitration process could be introduced instead of the existing court procedures to speed up the process of settling disputes and reducing the potential cost liabilities. Such modifications would also encourage access authorities to be more pro-active in pursuing formal procedures to remove obstructions – the present situation appears to discourage access authorities from taking action because they fear the costs of litigation and the protracted time this takes up before disputes are settled.

Our second main concern relates to the need to do much more in providing path networks. The Report indicates that while core path planning has been seen as a “positive process”, which it is, this does not mean that good path networks are actually being delivered on the ground. There is a big difference between drawing up a plan and seeing it implemented. This is important because Scotland has suffered in the past from a huge loss of paths due to agricultural, forestry and building developments at times when measures to formally protect paths for public use were largely ineffective. The result is that Scotland is probably one of the worst countries in Europe for its density of paths in lowland areas and around settlements. Much needs to be done to develop new paths, using a variety of funding mechanisms, and this may be something that the Committee will wish to explore in greater depth at some stage. Included within this must be much greater encouragement to access authorities to use compulsory purchase powers to secure the land on which to build the paths. Otherwise, access authorities can spend years negotiating with landowners who are resistant to public access, with the public becoming increasingly frustrated with plans for path networks that they have helped develop but produce no change on the ground.

We hope these comments are helpful to the Committee and would be pleased to provide further information if required.

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