



the National Trust for Scotland
Urras Nàiseanta na h-Alba
a place for everyone àite don h-uile duine

Land Reform Review Group

Call for Evidence



Introduction

The National Trust for Scotland is Scotland's largest conservation charity, with a membership of 312,000 and responsible for the management of some 76,000 hectares of Scotland's most special landscapes. The Trust has worked for eighty years to safeguard Scotland's natural and historic heritage and to support public access and enjoyment to this heritage.

The Trust's staff and volunteers manage properties for public enjoyment in urban, peri-urban, rural and remote areas of Scotland, and we are pleased to be able to provide evidence to the Review Group. We have structured our response by the three sections of the Land Reform (Scotland) Act 2003: access; Community Right-to-Buy; and Crofting Community Right-to-Buy.

Access

The National Trust for Scotland is a strong supporter of public access to land for recreation and enjoyment. We know how important this is to the wellbeing of Scots and of visitors to Scotland and it has been a driving force in the work of the Trust's members and volunteers.

The 2003 Act set out the right of public access, subject to non-interference with private and commercial activities, and balanced this right with an expectation that access users, and access providers, would behave responsibly. This expectation of responsible behaviour was to be set out in detail in the Scottish Outdoor Access Code.

Evidence-based Advice

As noted by the research team who pulled together the Post Legislative Scrutiny of the Land Reform (Scotland) Act 2003, whilst there is ample perceptual feedback on the impact of access rights, there is little substantive evidence. The lack of evidence or national monitoring of issues means that access rights can be interpreted and applied differently across Scotland. Whilst the National Access Forum can try and pull together evidence from across the Local Access Forums this is very difficult given the majority of members have access officer duty as a secondary role to their main employment.

We would recommend that the Review Group lead on collecting, collating and analysing these data to inform their review.

There is currently no single information point for access users and managers to go to where they can ask questions or present issues. Where a website exists it often sends users to external websites containing incomplete or obsolete information. The ability to easily share relevant research is also currently absent.

There are many examples of where greater sharing of evidence would be of use:

- Consistent and workable approach to dealing with those who abuse access rights.
- Learning from this evidence base and refining the Scottish Outdoor Access Code.
- Providing clear and objective definitions that are easily understood and enforced.
- Monitoring the impact of changes – for example looking at whether a reduction in crime and anti-social behaviour in one area has led to the perpetrators replicating the behaviour in a different area, or whether the behaviour has been eradicated.
- Examining the outcomes of legal challenges to date, which will affect how the Act is realised on the ground.

Possible policy solutions

We would welcome the expansion of the Scottish Outdoor Access Code website and database with clear responsibilities for maintenance bestowed against the appropriate agencies. Establishing a single source on public access linked from third party websites (for example Paths for All, the Forestry Commission, sportscotland, Crofting Commission, National Farmers Union for Scotland, National Trust for Scotland to name but a few) would help ensure that clear and unambiguous guidance and consistent advice was available to all.

A central source would also allow initiatives to be clearly filed for interested users to find – for example ‘Heading into the Scottish Hills’ and ‘Do the Ride Thing’. In the event of a biosecurity threat (for example, foot and mouth disease, or phytophthora outbreaks) this would be especially beneficial in terms of producing a clear, single message on access and appropriate precautions.

The website should provide not just information and case studies on access, but allow individuals to post access issues which will be appropriately forwarded to the correct team to respond to, with answers available via a Freedom of Information compliant publication scheme.

Public access can also benefit from being supported through dedicated services, such as Rangers. This can help manage competing usages or the impact of visitors on fragile areas of natural heritage. Currently, Ranger posts are being cut by local authorities, but the value of their role remains essential in promoting and managing responsible access. We would like rangers to be available to help visitors learn about their environment and enjoy interacting with the outdoors in a positive manner that avoids conflict and problems. We would recommend the Review Group explore how public access is being supported by public and private landowners in terms of these resources, and the implications of any reductions.

Legislative changes

The Scottish Outdoor Access Code needs to reflect legislative changes which have subsequently been introduced, for example, the Wildlife and Natural Environment (Scotland) Act 2011, the Control of Dogs (Scotland) Act 2010 and, perhaps most significantly, the Equality (Scotland) Act 2010.

Core path implementation and management

Whilst the Act called for a core path network to be planned, there was no funding for its implementation or management, which has led to an inconsistent approach to its delivery and consequent impact. There are opportunities for public support for core paths to be better realised, for instance in the reform of the Scottish Rural Development Programme, and done to a consistent standard.

Related to issues raised above regarding equality, it is desirable that in order to improve access to our countryside, there should be core Government funding available for land managers to work with local authorities to plan and implement paths which are suitable for people with different needs.

A better integrated path network – which links to the long distance path network – would encourage more local recreation and improve the visitor experience within Scotland. By using the path network to consider the need for facilities – such as restaurants, accommodation and alternative recreation – security for current and opportunities for new sustainable enterprises should also become evident. Greater information on paths and rights of way should be directly available on the SOAC website without having to go into access authorities' websites.

Also, when dealing with emergency path repairs – the current system of appealing to the local authority for permission can be clumsy and unnecessary. Land owners should be able to deal with issues caused for example, by landslips or access by utility companies, in a timeous manner without undue bureaucratic delay.

Control of Dogs

A very clear definition of 'under control' must be laid out. It would seem reasonable a dog under control returns to heel on the first call irrespective of any distractions it encounters – be it livestock, wild animals, children or other dogs.

In urban greenspaces – in order to maximise access and encourage the enjoyment of all users – land managers should be permitted to request that the dog is on a 2 metre lead.

We would also like to see clearer guidelines on the control and management of dogs by professional dog walkers.

The National Trust for Scotland welcomes dog owners and in most cases dog owners act responsibly and can also bring benefits to our properties in terms of providing a visible presence which both deters anti-social behaviour and can also alert the property manager to other issues.

Protection of wildlife

Recent research by Forest Research noted that there was little research evidence as to the impact of recreation on wildlife disruption but that correcting short term and swift damage could take a long time to restore. Notably, the report stated: "*We therefore remain largely ignorant in relation to some vital aspects in the [impact of recreation on wildlife] debate... Unless more compelling evidence is generated, debates about links between recreation and wildlife disturbance will continue to be based on uncertain, and sometimes conflicting, assumption. (Forest Research, "Recreational use of forests and disturbance of wildlife – a literature review", 2012)* For example, St Kilda's sea stacks are home to the largest breeding colony of gannets in the world.

As the land owner, we currently politely request that climbers do not access Stac an Armin or Stac Lee during the gannet breeding season, but this is the most that we can do. Clearly in this specific case the stacks are not managed by on-site personnel and inappropriate access or criminal behaviour cannot be monitored with ease by community policing. Whilst incidents are not prevalent, it would be useful to have best practice advice.

The panel should consider the best way in which land managers can protect our most vulnerable landscapes from damage – could SNH apply restriction notices on these areas during bird breeding season for example? Powers to restrict access must be short term and only granted when entirely warranted by the rarity or importance of the species being protected.

Wider anti-social behaviour issues

As a land-manager with a commitment to public access and enjoyment, we recognise that there can on occasion be problems with anti-social behaviour by access users, either through thoughtlessness or malice. Anti-social behaviour obviously poses a problem not just for the land manager, but also for other access users, especially the young and vulnerable.

We would ask that the Review Group give due attention to the issue of anti-social behaviour by the small minority of irresponsible access users and the implications for the effective delivery of the Act. The Review Group may want to consider how public authorities have been approaching irresponsible behaviour and the potential implications for the achievement of the Act's purposes in future. For instance, the bans on alcohol consumption in many public places, or the introduction of a seasonal ban on wild camping on the east shore of the Loch Lomond by the National Park Authority. The rationale given for this by the Authority in its publication "East Loch Lomond Camping Byelaws - Background Information" (August 2010), on the limits of the Act should be considered by the Review Group.

Commercial exploitation of access rights

The Act sets out that in relation to commercial exploitation, access rights apply only "for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit."

The current version of the access code illustrates this principle with the examples of a mountain guide taking out a customer hill-walking, a canoe instructor with a party of canoeists or a commercial writer or photographer writing about or taking photographs of the natural heritage.

This does not reflect all of the types of commercial usage that a site could be subject to – and which the Act and the code are currently silent on. For example, foraging for wild fruits or mushrooms, which on an occasional, individual basis may not be detrimental to the landowner or the natural heritage, but which on a commercial scale could be. Similarly, access by a group of walkers, and consequent impacts over that period, is very different from an organised event which could see hundreds or thousands of participants crossing an area of land in a short period of time – with potential consequences for the enjoyment of others, implications for health and safety, the maintenance of access infrastructure or other land management purposes.

We would ask that the Review Group consider how the scale and intensity of the commercial exercise of access rights, not just the type of activity, can affect land managers and other access users and the need to upgrade the Act and code, as appropriate.

Community Right-to-Buy

There has been a strong focus on community right-to-buy as a policy solution to improving rural sustainability. We consider that greater evidence should be gathered across Scotland on successful partnerships and innovations which have led to greater sustainability and community cohesion, including, but not limited to, types of ownership. Given the social and economic challenges, including transport costs, changes in primary industries, access to education and other services (to mention only a few) that rural and peripheral communities wrestle with, the role and utility of buy-outs needs to be considered in context.

There is a risk that community right-to-buy can reinforce a simplistic and often divisive narrative that the 'community' is good and the landowner is bad. One issue for the Review Group to explore is what constitutes a "community" – whether of locality, interest, or involvement. The National Trust for Scotland, for example, was created by Scots to help safeguard some of our most valued natural and historic heritage for the benefit of the national community – and in practice this involves members, volunteers and residents working together at local level on a variety of conservation, social and economic activities. Where does "community" begin and end in these cases?

The Scottish Government's Planning Advice Note (PAN 3/2010) on community engagement points to these overlapping definitions of community: "Defining 'community' is not simple. It means different things in different situations. It can be based on location – those who live, work or use an area. But it can also be based on a common interest, value or background – for example societal groups (based on race, faith, ethnicity, disability, age, gender or sexual orientation), members of sports clubs and heritage or cultural groups. Each community will have different desires and needs which have to be balanced against the desires and needs of others."

We would encourage the Land Reform Review Group to recognise that conservation charities which own land do so as communities of interest not as private landowners. Our membership forms the community, rather than the postcode, and we own land – often inalienably – for the nation's benefit. The National Trust for Scotland is also responsible for overseeing Conservation Agreements, put in place by owners to safeguard aspects of natural or cultural heritage, and which transfer with the property.

The National Trust for Scotland is not just a landowner with a focus on conservation and public learning, education and enjoyment. Our property staff and volunteers fulfil many roles outwith their work for the Trust, from sitting on the community council to leading mountain rescue teams. They work in partnership with many groups – community to government – to develop their local area for the benefit of the local community and the nation as a whole. As a charity we run wildlife watch clubs with primary schools, provide mountain leader training, let allotments and community gardens and run a community engagement programme offering opportunities to disadvantaged groups to gain skills on our properties to name but a few.

In terms of sustainable economic development in partnership with appropriate conservation of our landscape to take place, there must be a greater emphasis on stewardship and engagement rather than simply focusing on ownership.

As conservation charities work to preserve and protect Scotland's landscapes, built and natural heritage for the nation, they are well placed to help run these assets (both built and natural) for the public good. An extension of the current law to encourage an absolute right to buy could be detrimental to this.

The "Overview of Evidence on Land Reform In Scotland" notes that "Compared to economic and social improvements, the Act seems to have left a number of potential environmental gains relatively unexplored." We would like to see the Review Group give attention to the achievement of environmental objectives through different forms of ownership. Evidence from Coll, Eigg or Rùm could usefully be drawn on here, and the National Trust for Scotland would be happy to contribute its own experience in working with communities, for example from Balmacara or Fair Isle.

Community right to buy tends to be triggered by a key issue, such as an absent landlord or a lack of affordable housing. A better understanding of these triggers, and support for dealing with these specific issues may be better for the community than buying the estate.

Land managers equally face challenges to how land is managed due to the inappropriate or conflicting management of neighbouring land, which impacts on the effectiveness of economic and environmental objectives and have to work with neighbours to attempt to broker partnership agreements.

We would welcome the opportunity to put forward further case studies of effective partnership working, under a variety of ownership situations, should this be of interest to the Review Group.

Potential solutions

Encourage the use of community associations

We asked our staff what the greatest risks were to the communities in which they lived and worked, as well as what the National Trust for Scotland could do to address these. Answers included: the dependency on a strong tourism season, the issues associated with affordable housing, lack of sustainable jobs and high costs of transport and energy.

Within our properties, Trust staff and volunteers are part of the community in which they work, and are often drawn from that local community. They are not absentee landlords. They facilitate change and work with local groups to take ideas forward. Community associations on our island properties come up with projects which would enhance the community – for example micro-renewable projects to help reduce energy costs, better moorings or a local festival – and the Trust helps fund these. Similarly they identify the skill sets missing from the community to help identify the type of people they would like to recruit to the island.

Landowners are recognising the need for partnership in terms of needing people to stay and work in the community and working together to encourage visitors instead of competing for them. Greater partnership work – for example with local tourism forums, remains a key objective. A focus which is too great on visitor management plans can damage both the local community and the conservation aims of the Trust and so it is important that all needs are managed appropriately by community associations.

Provide training and support to community groups

A lack of skills can often dampen the effectiveness of working with community groups. Any forthcoming community buy-out funding tool should include resources to be allocated to relevant skills development courses and effective partnership training. This could be accessed by landowners, managers and

community groups. Groups should also be able to access neutral facilitators to help partnerships and community engagement plans move forward effectively.

One area where the Review Group could possibly look for similar experiences is in sport where Supporters Direct have been helping fan groups move into club ownership for many years. The issues of different communities of interest, major trigger issues and long terms vision have been experienced and it is only now that the positive impact of supporter shareholding and directorships are starting to be made.

Affordable housing

Fragile and small rural – particularly island – communities may have few opportunities to increase their population. Where a rented property does come up, the free market may work against them. Naturally it is desired that a family move in, often bringing specific skills, sustain the local school and help future proof the town against its biggest threats.

This can be awkward for everyone but using a housing forum to help create 'job descriptions' for available properties, such as the Trust employs on Fair Isle, can help set realistic expectations for the new tenant and ensure that the community receives a new family with relevant skills that can help make the island stronger.

By the landowner making the decision to lease to a new tenant as transparent as possible the community and landowner can work together, building trust and confidence in one another. As there is not one perfect model for ownership, as the policy memorandum for the Land Reform Bill acknowledged, it would be useful for the Review Group to examine the strengths and weaknesses of different ownership types for the achievement of local and national interests.

Where community buyouts have taken place – for example on Eigg – the uncomfortable truth is that free market economics have seen house prices rise way above local affordability. Affordable houses – and sustainable jobs – can be few and far between. New residents may need to create their own employment opportunities in order to become self sufficient, which may not possible with open market prices. This represents a real threat to the community trust in terms of sustaining the island.

As an example of how other ownership models can work, over the past twelve years the Trust at Balmacara has had an active role in the provision of more affordable housing. Eight Short Assured Tenancies (SATs) have been created in Balmacara Square, alongside enterprise opportunities with the creation of four workshops. A further two SATs were created on the estate and the management of all of these is now carried out by Lochalsh and Skye Housing Association. In addition 2.4 hectares of land was released to the housing association on the edge of Plockton – regarded as one of the more pressured housing areas in Scotland – to develop more affordable housing for the village.

Crofting Community Right-to-Buy

The National Trust for Scotland owns in excess of 100 crofts across Scotland and has a clear remit to protect and develop crofting. We do so in several ways, from running an award-winning traditional croft management scheme in Balmacara to setting up a crofting education programme in Plockton.

The need for a township to buy out remains largely untested and it will be many years before the impact of any buy-out which is successful is evaluated. Success will also depend on wider circumstances of markets, support schemes and the availability of complementary economic activities. There is a need for a township to work together to effectively manage land, the removal of just one cow in some small areas of common land could be environmentally destructive and the balance of the land requires significant partnership. A land manager can assist this and also help with creating a supported pathway into crofting for new entrants. It can therefore in the best interests of the crofting township to have access to a local land manager – something noted by one respondent to a recent North Harris Community Trust survey.

There are also many hypothetical issues attached to this legislation. Where a community buy-out has already taken place on the land, could the crofting township then buy-out or re-sell to a single landowner? What happens to the stability of a small township if a member of a successful buyout then successfully manages to de-croft? What happens to the local environment if the management of croft land becomes too piecemeal?

In conclusion, we still have reservations about the crofting community right-to-buy legislation in terms of its practical application and think greater emphasis should be placed on the better management of crofting townships in the first instance, for the benefit of the community and the environment.

Absolute Right to Buy

The National Trust for Scotland owns and manages land with the public benefit in mind. In some cases, this land is held inalienably in recognition of its importance to the nation. Other communities and conservation bodies will also be seeking public benefit through their ownership. We would therefore be cautious about an absolute right to buy being introduced.

As a crofting landlord, the National Trust for Scotland has overseen the sale of croft house sites and, on occasion croft land, where this was considered to be in the community interest and it did not conflict with our conservation responsibilities. However, as the new Crofting Commission notes in its draft plan (2012), the exercise of the right to buy for crofters, along with decrofting, can have adverse consequences: “A study in 2010 of two crofting townships in south Skye showed that 80% of all house and house site sales on the open market over the previous 10 years had been for holiday homes for people from outwith the Highlands.” The Crofting Reform (Scotland) Act 2010 requires that the Commission take into account the effects on the local community of removing land from crofting, and its associated social and cultural benefits, not simply to oversee the transfer of property. Similarly, the introduction of an agricultural right to buy, if the intention is to help create new pathways for younger people especially into farming and crofting, may not be the best solution. Its exercise may result in opportunities for subsequent new entrants being reduced.

A further concern relates to how a local community selects what they wish to buy and any choice relating to taking on the profitable areas of land, without taking on any assets which may bear a financial burden. By not taking a holistic approach to the buy out the landscape could become fragmented and archaeology, biodiversity and other aspects may deteriorate.

We would therefore reiterate the desire to see conservation charities recognised in the same way as community trusts in terms of our aims and objectives to develop and sustain land for the benefit of the nation.

Conclusions

The Land Reform (Scotland) Act 2003 remains a landmark piece of legislation in Scotland's development. In terms of access rights, it has codified what many people considered to be the customary practice, and for which the National Trust for Scotland has argued. There is still scope to improve the delivery of the Act's aspirations in this area, including improved guidance and sharing of experience, to ensure that public enjoyment for all is supported.

With respect to community right-to-buy, whilst we agree that absentee and rogue landowners can cause much distress to the Scotland's communities we think the emphasis on land reform review should focus on supporting stronger partnerships and better management between different communities of interest to identify and address threats to the area and work together to address these. An emphasis beyond ownership to look at improved governance and engagement in land use issues and the creation of sustainable community assets will have far greater impact than land buyout alone – which is only likely to be the preferred solution in minority of cases.

We would like to see more longitudinal evidence gathered on the long-term benefits of community ownership, including on environmental and conservation outcomes. It is still too early to know if the existing community land buyout programme has been for the longer-term community or public good and has sustained development compared to those in other types of ownership.

We would be happy to put forward more information on any of the above proposals and extend an invitation to visit our properties as part of your field visit consultation phase.