

Land Reform Review Group – submission of written evidence from Ramblers Scotland

Ramblers Scotland welcomes the opportunity to submit evidence to the Land Reform Review Group (LRRG). Our comments relate mainly to the statutory rights of access established in Part 1 of the Land Reform (Scotland) Act 2003. We are happy for our comments to be made public and have completed a respondent information form.

We would be very pleased to attend a meeting of the LRRG to expand on our submission and give oral evidence on any issue relating to Part 1 of the Act. We can also recommend locations that the Group may wish to visit to examine how the issues identified by the Ramblers and other outdoor recreation interests are working out on the ground.

The Ramblers' Association was founded in 1935 when Rambling Federations from Edinburgh and Glasgow joined those from four English cities to form an organisation which would campaign for rights of public access to land. Ramblers Scotland is the representative body for walkers in Scotland and recognised by **sportscotland** as a Governing Body of Sport. We have around 6,500 members in Scotland and 112,000 across Great Britain, and 54 local walking groups in Scotland run entirely by volunteers. We work to safeguard and facilitate public access to land, to promote walking for health and pleasure, and to protect the natural beauty of the countryside. The Ramblers operates with devolved governance structures in Scotland and Wales, with Scottish and Welsh Executive Committees elected at annual meetings of the members in the two countries. These committees determine the policies and operational practice of the Ramblers in relation to all the issues which are under consideration by the LRRG.

Ramblers Scotland played a key role in the development of Part 1 of the Land Reform (Scotland) Act 2003, both by our contribution to discussions in the National Access Forum (NAF) over the previous decade and by the efforts of our staff and members who responded to consultations and engaged in the Bill process as it passed through Parliament. Since the legislation came into effect we have been monitoring its implementation across Scotland and continue to represent the interests of recreation users on the NAF.

We regard the establishment of statutory rights of public access over most land and water in Scotland as one of the most significant achievements of the Scottish

Parliament since it was reconvened in 1999. These statutory rights have built on the custom and tradition by which access has always been taken to land and water in Scotland, with the important condition that these statutory rights supplemented and did not diminish any existing customs, traditions and rights. The legislative approach reflected the arrangements in the Scandinavian countries, especially Norway and Sweden, and was very different to the legislative approach used in England and Wales with the passage of the Countryside and Rights of Way Act 2000.

During the legislative process in the Scottish Parliament we were impressed by the thorough approach taken by the main committee that considered the Bill, the Justice 2 Committee, as well as the input of other committees that considered the legislation. A notable feature was the cooperation of members of the different political parties in this process, including those in opposition at the time, all of which led to well-considered legislation and an outcome which has stood the test of time. After 10 years we are confident that what is generally known as the 'right to roam' legislation in part 1 of the 2003 Act is sound legislation, laying down clear principles for taking and managing public access to Scotland's land and water. These should not be undermined or changed in any significant way as a result of the work of the LRRG.

The combination of the statutory framework provided by Part 1 of the Land Reform (Scotland) Act 2003 and its associated Scottish Outdoor Access Code provides what is regarded by most outdoor organisations as a world class arrangement for public access. There are few other countries which have such comprehensive rights, for a very wide range of activities, in recreational, educational and commercial settings, with clearly set out responsibilities for access takers and land managers to ensure that access rights work well. We are pleased to note over the last ten years the interest of other countries in the Scottish approach and its potential application elsewhere.

In terms of the LRRG's work we feel that the main emphasis should be on an examination of how well the Act has been implemented and whether this needs some relatively minor adjustments to improve the effectiveness of implementation.

The remit of the LRRG is to identify how land reform will:

- *enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;*
- *assist with the acquisition and management of land (and also land assets) by communities which have an even greater stake in their development;*
- *generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.*

The rights of the public to take access to land do not have any reference to the ownership of that land, but rather these rights apply over most land and inland water in Scotland, as long as they are exercised responsibly. There are reciprocal responsibilities for land managers to facilitate access on their land. Certain areas of land are excluded

from these rights, such as houses and gardens, sports or playing fields when in use, or places such as quarries, airfields, etc, but in the years since Part 1 of the Act came into effect in February 2005 with the publication of the Scottish Outdoor Access Code there has been a widespread general acceptance of these rights by all but a minority.

Scottish access rights provide the framework for managing outdoor recreation and for encouraging greater participation in outdoor activities, from cycling every day to the local primary school, to taking part in winter ice-climbing in the Cairngorms. These rights are recognised as being of world-class quality and one of Scotland's unique selling points, something of which we should rightly be proud. For example, publicity associated with World Cup and World Championship mountain biking events at Fort William mentions access rights as one of the reasons why Scotland is one of the best countries in the world for mountain bike activities:

"Scotland also offers one of the best mountain bike playgrounds ...Together with an enlightened attitude to countryside access (you can go pretty much anywhere as long as you respect certain fundamental rules) it's a great place to get on your bike."¹

There is a growing body of evidence of the enormous economic benefits which recreation brings, especially to rural communities. To give a few examples, the 2011 Scottish Recreation Survey² found that 83% of adults made at least one visit to the outdoors for leisure or recreation, generating an estimated expenditure of £2.7 billion. Walking is one of the most popular activities for visitors to Scotland, both from home and abroad, and the walking opportunities offered in Scotland are much valued. A VisitScotland survey³ in 2011 found that 45% of visitors to Scotland had gone on a short walk as part of their holiday, 40% had enjoyed a centre-based walking holiday and 35% had undertaken long walks/rambles. A report by Scottish Natural Heritage into nature-based tourism⁴ in 2010 cites wildlife tourism as having a value of £127m to the economy each year, walking tourism being worth £533m, and adventurous activities bringing £178m to the economy each year. A study of the Fife Coastal Path⁵ estimated between 480,000-580,000 people used the path each year, generating £24-29m of expenditure and supporting between 800-900 full time equivalent jobs.

Added to this economic benefit, outdoor recreation and active travel are key ways of encouraging the population to be more active in their daily lives, thus helping to tackle key health issues relating to inactivity, such as heart disease and obesity. Investment in walking and cycling infrastructure is a vital aspect of the preventative spend agenda. As we approach the Commonwealth Games in 2014, it is important that levels of walking

¹ Website for 2013 Mountain Bike World Cup <http://fortwilliamworldcup.co.uk/useful-stuff/mountain-biking-in-scotland/>

² SNH: Scottish Recreation Survey 2011, http://www.snh.org.uk/pdfs/publications/commissioned_reports/535.pdf

³ VisitScotland 2011 <http://www.visitscotland.org/pdf/external%20visitor%20survey.pdf>

⁴ SNH, Valuing nature based tourism in Scotland 2010 <http://www.snh.gov.uk/docs/B720765.pdf>

⁵ Fife Coast & Countryside Trust, 2006

and cycling increase in order to effect a behaviour change across the whole country and deliver physical activity legacy benefits from these Games.

Furthermore, an outdoor lifestyle fosters an understanding and appreciation of the natural world; getting outdoors to take part in recreational activities is a key means of raising awareness of the value of the natural environment. This clearly relates to the remit of the LRRG in terms of enabling more people to have a stake in the management and use of land, and generating new relationships between land, people, economy and environment.

We will outline below areas of concern in the implementation of Scottish access rights under the headings suggested in the call for evidence paper.

- 1. Outline your vision of how things could be different and explain why, in your opinion, they should be different.*

Failure of access authorities to uphold access rights

After the legislation was passed it was hoped that this would pave the way for many long-running, entrenched conflicts to be resolved, and for Scotland's countryside to become a more welcoming place for all. Ten years after the passing of the Land Reform (Scotland) Act 2003, this vision has only partly been achieved. There are still many examples of non-compliant signage in the countryside, which can act as a deterrent to access-takers who are less sure of their rights, and can lead to negative perceptions and experiences. Locked gates are also still widespread which are a particular issue for horse-riders but also for cyclists and less-able walkers. While there may be a legitimate reason for some gates to be locked, such as where fields of livestock run alongside busy roads, we feel that some land managers are not facilitating access by ensuring that people can continue to cross their land by some alternative route without locked gates, or by installing self closing gates for access takers adjacent to the main gate for vehicles or farm animals. Access authorities are failing to pursue this issue. The result is that horseriders and others are avoiding certain areas and only taking access in specific areas where they are confident of being able to continue without any obstructions being encountered.

More seriously, access authorities seem reluctant to use the powers that they have to uphold rights of access, especially in cases where landowners prove recalcitrant. The fear of the costs of litigation that might arise, especially during this time of economic difficulties, has led to access authorities showing restraint in dealing with landowners who have far greater financial resources and the capability of continuing these cases to higher courts on appeal. We are also aware of the great financial risk posed to charitable organisations, community groups and private individuals of taking a case to court, even when acting in the public interest. Having been involved in two test cases ourselves (Gloag v Perth & Kinross Council and the Ramblers' Association, and Snowie v Stirling Council and the Ramblers' Association) we are very much aware of the financial

risk involved. We feel that a new procedure using some form of arbitration process needs to be built into the legislation in preference to the existing arrangement which involves reference to the sheriff court to determine the extent of access rights. The new process needs to be quicker, cheaper and fairer than the present one. See below for further details.

We are also aware of many situations around the country where, following the report of an obstruction, an access authority has expressed the opinion to the landowner that access rights apply in that place. The landowner's response is to threaten to appeal any legal notice served and take the case to court, at which point the access authority stops any activity in this case. The result is that unscrupulous landowners feel that they are able to challenge access authorities without facing sanctions, and the status of the legislation is seriously undermined.

Those cases which have come to court have not always been helpful to give guidance on other issues due to their specific circumstances, and yet access authorities have sometimes misinterpreted the findings. This has had the result of deterring them from pursuing other cases for fear of the perceived precedent which suggests they are less likely to succeed in court. One example is *Tuley v Highland Council*, which has led to a loss of confidence in access authorities as they feel it is now more difficult to meet the test of the legislation that an obstruction is there for the main purpose of preventing or deterring access. Some modification of the legislation is needed to ensure that obstructions can be removed if, "in the opinion of the access authority" such an obstruction is unreasonably deterring access.

Failure to expand path networks

Our second main concern relates to the need to do much more in expanding and maintaining path networks. 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.

The legislation laid a duty on access authorities to draw up a system of core paths in their areas and this core path planning process is now almost complete. Yet it is clear that very few new paths have been identified, and across Scotland core paths are almost entirely based on existing paths. In some areas many lengths of minor roads have been incorporated into the core path network. This process has been undertaken with a large amount of community engagement and consultation, and it is clear that there is a demand for more paths, especially in lowland areas and around and between communities. An expansion of paths would enable more people to take up a more active lifestyle by walking or cycling to work, to school or to the shops in a safe and pleasant way, and yet investment for these paths comes predominantly from transport departments which historically have spent little money on walking and cycling.

Currently the Scottish Government's own active travel budget is proportionately only around 1% of the total transport budget so there is no example given and little incentive for local authorities to spend more – although it is worth mentioning that Edinburgh has a laudable policy of spending 5% of its transport budget on active travel, and a corresponding modal share for cycling to work well above the national average.

While core paths plans are now drawn up, that does not mean they are being implemented on the ground – and core paths comprise just a small proportion of the entire path network. As noted above, access authorities seem reluctant to use the powers they have within the Act, and this includes powers to use compulsory purchase or path orders. Just one path order has been used in Scotland, to extend the Speyside Way, and this followed many years of fruitless discussion with the landowner concerned. Much time is spent on negotiating with landowners across Scotland who are resistant to public access, with the public becoming increasingly frustrated with plans for path networks that they have helped to develop but which produce no change on the ground. It is inconceivable that transport departments would spend so long negotiating routes for new roads and yet paths do not have the same status despite potentially being of huge public benefit.

Health, Safety and Security

One further issue that we feel needs consideration by the LRRG is the interface between the land reform legislation and other legislation passed by the UK or Scottish Parliaments. One example is the establishment of byelaws to control camping on the east shore of Loch Lomond. While we accept that there have been significant behavioural problems, litter and vandalism in this location, we did not agree with the Loch Lomond National Park Authority's decision to introduce camping byelaws at the same time as an alcohol prohibition byelaw was being introduced. There also seemed to be a reluctance to use other legislative provisions to control unacceptable behaviour or activities. This, combined with long delayed management action to provide camping spaces and toilet facilities, appeared to compound the problem. The LRRG may wish to recommend the need to avoid such camping byelaws if at all possible in the future and for access authorities to pursue alternative solutions.

Other problems have arisen in relation to health and safety issues in relation to the crossing of railway lines, access to windfarm sites during construction and forest areas during logging activities. In all these cases the land managers have been suggesting that UK health and safety legislation in some way 'overrides' the Scottish access legislation. We do not accept this and have had prolonged discussions about the way in which health and safety issues and associated insurance or liability matters are being used, in our view unreasonably, to constrain access. Again this is an issue which we feel could be explored in more detail by the LRRG with a view to making recommendations to help resolve matters.

- 2 *Indicate any barriers there may be in the way of attaining your vision.*
- 3 *Suggest how these barriers could be removed and progress facilitated – whether by voluntary, legislative, fiscal or other means.*

As regards the first issue relating to lack of enforcement of the legislation, there are two barriers to be removed: access authorities being reluctant to use the powers that they have, and the financial concerns relating to court actions. This reluctance could be removed by continued political recognition of the importance to Scotland's rural economy and reputation as a world-renowned country for outdoor recreation, and of the access legislation. A reminder to access authorities to use the powers that they have would be helpful. The Guidance to local authorities and national park authorities which accompanied the legislation could be updated to this effect.

As for the financial barriers, we feel that some mechanism should be considered which would substantially reduce the financial risk of such court actions where the public interest is being upheld. 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 by the granting of Protective Expenses Orders to limit the liability for each side. Alternatively, 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.

With regard to the issue of path network expansion, once again the Guidance could be updated to reinforce the need for access authorities to prioritise the development of new paths including the use of their existing path creation and compulsory purchase powers. In terms of finding the investment required, a variety of funding mechanisms needs to be harnessed and access authorities encouraged to work in partnerships with local communities and the private sector to develop more paths. At a government level, all relevant departments need to recognise the role of access in terms of providing benefits to health, the environment, communities and tourism, which in turn will lead to identification of funding streams from agriculture, transport and other budgets.

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