

Scottish Canoe Association Response to Land Reform Review Group Consultation

Land Reform Review Group Consultation

At the very beginning of this consultation response we would like to stress that the Scottish Canoe Association (SCA) is willing and prepared to talk to the Land Reform Review Group (LRRG) during 2013. We would welcome the opportunity to give oral evidence to the LRRG and would also be willing to arrange an outdoor site visit to show you a range of issues on the ground.

Access Rights

The SCA's overriding interest in the Land Reform (Scotland) Act 2003 lies in the access provisions contained in Part One of the Act.

SCA Members' Opinions

On hearing about this consultation the SCA canvassed its membership for opinions on the issue, and there were two very strongly held views that came across from those who responded to our own consultation.

- 1) The access provisions in Part 1 of the Land Reform (Scotland) Act are seen as an extremely important milestone in Scottish history. Our members believe that the introduction of statutory rights of access in Scotland has been extremely successful, and overall, no significant changes are desired or required.
- 2) There are a number of problems still being encountered by canoeists and kayakers and these are mainly due to ineffective implementation and management of Scottish access rights. Such problems could be addressed fairly simply by access authorities having a greater commitment to upholding access rights and the police exerting stronger enforcement of the law.

Scottish Access Rights

Throughout this response we use the term "Scottish access rights". This term came out of discussions at the National Access Forum and refers to the unique access system in Scotland with its balance of statutory rights and emphasis on responsibilities that are expected from both recreational access takers and land managers.

The SCA wishes to protect the following fundamental principles of Scotland's statutory access rights that were enshrined, as a result of the will of Parliament, in the 2003 Act:

1. There is a right to be on land and to cross land;
2. There is a right to exercise access rights for recreational, educational and commercial reasons;
3. Rights of access to land include inland waters, canals and foreshore.

In passing the Land Reform Act, the will of the Scottish Parliament was to provide the public with statutory access rights to land and inland water in Scotland. It is disappointing, therefore, that the actions of a small number of individuals has prevented those taking access on water from gaining the full enjoyment of our rivers and lochs because of an unwillingness on the part of a tiny minority to share a resource, and a determination to prevent the full implementation of the law.

We believe strongly that the route to reconnecting the people of Scotland with Scotland's land lies in the public being entrusted with statutory access rights and that it is appropriate for those rights to be backed by an emphasis on responsibilities from all parties. We also believe that the key to increasing levels of responsibility lies with the educational and commercial sectors having the right to use land, and for them to be encouraged to include the communication of Scottish access rights to those in their charge.

A principle that the SCA has often expressed is that Scottish access rights are easy to understand and therefore easy to teach. This is in stark contrast to the confused legal situation that existed in Scotland prior to the passing of the 2003 Act. Under the old system it was very difficult for a teacher or leader to include access rights in their teaching because there was very little agreement as to what rights existed. The 2003 Act has removed that confusion and provided teachers and leaders with an easy to understand system that should therefore be relatively easy to communicate to others. Indeed, the SCA encourages the inclusion of access rights and responsibilities in the teaching of canoeing and kayaking.

Economic factors

In addition to these arguments in favour of commercial and educational access, it is also worth pointing out that these sectors provide much needed employment throughout Scotland and make a valuable contribution to rural life and the rural economy.

The combination of Scotland's scenic attractiveness and our modern access laws provide the national and rural economy with a real advantage. Visitors come to Scotland to participate in outdoor activities because of our stunning countryside and the knowledge that they can gain access to the land and water. This is especially

true for access to inland water, which is incredibly difficult to access throughout the rest of the United Kingdom.

Nevertheless, there are certain locations where the provision of facilities would make access easier and there is the potential, on occasions, for the community right to buy provisions being used in order for a community to buy a piece of land and provide recreational facilities like car parks and visitor centres.

Scottish Outdoor Access Code

The SCA supports the principle of there being a Scottish Outdoor Access Code (Code) to provide information about the Act in an easily digestible format and to give examples of good practice in terms of responsibilities on each party. Some of the wording in certain sections of the Code could be improved and we would welcome a review of the Code to improve that wording, but we would not want to see a change in the current emphasis of the three key principles applying to both the public and to land managers.

Access Authorities and Local Access Forums

The SCA is concerned that some local access forums have been operating outwith the spirit and boundaries of the Act and Code in their consideration of site-based access cases. Local access forums are a statutory requirement of the 2003 Act and as such there should be close scrutiny to monitor the way they carry out their functions. We are also concerned that the effectiveness of access officers around the country is highly variable and communication between access staff and access forums appears on occasion to be at least partly behind the problems on the less effective forums. There is very good written guidance for operating local access forums, but there will always be a need for some form of national monitoring of standards by a body such as Scottish Natural Heritage (SNH) or the Paths for All Partnership.

A further concern we have relates to access authorities being reluctant to challenge landowners on issues relating to access because of a fear of the cost of litigation. This is a serious problem that needs to be addressed if access authorities are to be given the confidence to uphold access rights in the way that Chapter 5 (Sections 13 to 27) of the Act intended.

National Access Forum

The SCA is a member body representing all watersports interests on the National Access Forum (NAF). Our view is that the NAF carries out a vital role in advising SNH and bringing together the many bodies with an interest in outdoor access. It is interesting to note that the Scottish Forum for Planning was established last year with the same principles and terms of reference as the NAF. We believe that this provides a sound endorsement for the current format of the NAF and the way it has developed into a mature forum with a balanced and inclusive membership.

A thought for the future

In the early stages of the debate on possible new access legislation in Scotland, SNH invited a couple of speakers from Norway. These Norwegian visitors explained that in Norway you don't remember being taught Allemannsrett (Norwegian access legislation). By the time you are three or four years old you have already learned it from your parents. A phrase they used was that it is knowledge that comes with your mother's milk. That was after Norway's legislation had been in existence for over forty years. Our vision for Scotland is that after forty years the Scottish legislation will be ingrained into the psyche of the population and the current problems caused by disruptive individuals will be long forgotten. It may well be that one or two generations of Scots will learn about Scottish access rights from school, outdoor centres and youth organisations such as the Scouts and Duke of Edinburgh's Award, but eventually it will become something you learn from your parents at a very young age.

Areas of Concern for the SCA

The SCA wishes to discuss nine areas of concern associated with the way in which Scottish access rights are currently being managed. In order to set the context for this section of our response it is worth stating that the SCA always had realistic expectations and was aware that there would be challenges and disagreements in the implementation of statutory access rights. In highlighting the following issues we are expressing our views on the need for greater efforts to be made in terms of working with partner bodies and seeking recreation management solutions to the issues that we describe.

1. Anglers on rivers and lochs

There is no doubt that the introduction of statutory access rights has led to an overall improvement in relationships between canoeists and anglers across Scotland. This is something the SCA welcomes, and the introduction of statutory rights has enabled the focus of our access work to move away from campaigning for access rights, and into educating paddlers and developing better relationships with other water users.

Unfortunately, there are still a small number of locations around Scotland where the right to paddle a canoe is challenged and where aggressive and abusive behaviour is still the norm. Over the past eight years the SCA has had to deal with around 100 cases of site-based access issues, including the following incidents:

- 1 A fishing line was cast at a canoeist who suffered cuts to his hands from the bare hook.
- 2 Motorised fishing boats are still being driven straight towards canoeists. This has happened on numerous occasions, especially on the Lower Tay, and is

particularly dangerous and alarming for the canoeists who find it hard to predict what the driver of the boat is doing.

- 3 Abusive language being shouted at canoeists, with no distinction made for the age or gender of the paddlers on the river.
- 4 Threats made to teenage paddlers to the effect that there would soon be barbed wire strung across the river to trap them.

Police enforcement has led to a number of incidents being resolved successfully, and access authority involvement has also resulted in many cases being dealt with swiftly and efficiently. However, there are still a number of locations where incidents are occurring and the SCA would like to see greater commitment, particularly from access authorities, in resolving these outstanding cases.

2. Commercial and educational rights

The SCA has been disappointed with the reaction of those land managers that object to the right to be on land for commercial and educational purposes. We regard it as a fundamental principle of the Act that if you can do something otherwise than commercially or for profit, then you should be allowed to do the same activity for commercial or educational purposes.

The fact that someone is being paid to lead a walk or teach canoeing skills is irrelevant in terms of their impact on a particular site. What is relevant is the size of a group and that group's needs for facilities. An example that demonstrates this point is that a walk leader being paid £1 to walk 1,000 people across a field is having a far bigger impact than one being paid £1,000 to lead a group of one. The size and impact of a group is an important consideration for a group leader, and that is part of taking responsibility for your actions as explained in the Code, whereas the fact that money, or the amount of money, is changing hands is of no relevance.

As well as being concerned that calls to have commercial access taken out of the Act would have serious consequences for the educational sector and commercial operators, we are also highly concerned that it would have unforeseen consequences for clubs. Club members have a commercial relationship with their club in that they pay an annual membership fee. Any change in the law with regards to commercial access could lead to fewer people joining clubs as a result of restrictions being placed on the activities that clubs could undertake. The potential consequence of clubs, colleges, outdoor centres and commercial operators not having the rights of access that they are able to exercise at the moment could in turn have a series of serious safety implications. We are concerned that the consequence of the loss of the commercial and educational right to take access would lead to more people taking up activities like canoeing and kayaking without any formal training. This is something we are keen to avoid, and we regard the commercial and educational rights as the perfect way of making it as easy as possible to take up these activities in a supervised, and far safer, manner.

The SCA also believes that clubs, instructors and commercial operators have a vital role to play in communicating the messages about Scottish access rights. Rather than putting barriers in the way of those who take people out into the Scottish countryside, this fundamental principle of the Act should be strongly defended and there should be encouragement to build Scottish access rights into all forms of outdoor education and instructor training in Scotland. Indeed, we also believe that Scottish access rights should be built into training courses in gamekeeping and land management as well, in order to emphasise the principle of all parties having rights and responsibilities.

3. Barriers - Water gates and wire

People who take access on land, be it on foot, bicycle or horseback can face barriers and blocked paths from time to time. The same can happen on water, especially with barriers such as water gates and wire fences designed to keep farm or wild animals from passing underneath a bridge. There is, however, a significant difference with barriers on water, and that is the safety aspect. Barriers on terrestrial paths should not be tolerated, but if faced with one, a walker, cyclist or horse rider can consider reporting a barrier to their representative body or access authority. A canoeist who is capsized by and then pinned against a water gate will not be thinking about reporting it to the SCA. Anyone who gets into that situation will be fighting for their survival, and that is why we are concerned about the number of water gates and wire fences still in place on paddleable rivers and burns across Scotland. The River Lochay near Killin has a particularly dangerous water gate on a paddleable stretch of river and the SCA would like to see the right of access on water, and safety of the access taker, being taken far more seriously.

As well as water gates, there is also another risk to paddlers in the form of barbed wire strung across burns and small rivers. The SCA has received reports of barbed wire across the upper stretches of the Irvine, Ayr and Tweed. The SCA dealt with a near drowning incident on the River Wick a few years ago when a paddler became entangled in an unmarked plain wire fence suspended across the river. That case was resolved amicably, but the safety implications of barbed wire fences across rivers are quite alarming and the SCA wishes to see stronger support for access rights being upheld on all waterways. That said, the SCA recognises the land management reasons for controlling livestock and wild animals, so we do wish to work with land managers and others to work out practical solutions to the issue of fencing in the vicinity of burns and rivers.

4. Illegal signs

Signs claiming “No canoes” and “Private – No Access” are still far too prevalent around the Scottish countryside and the SCA believes that it is now time for access authorities to be far more active in enforcing the removal of such signs. We would like to see the Scottish Government supporting access authorities in their efforts to

have such signs removed. If section 14 of the Act is considered not strong enough to enforce the removal of illegal signs then we would like to see the wording of that section strengthened in order to ensure that it achieves its original intention.

5. Barriers on land access to get to water

Canoeists and kayakers can on occasion come across barriers on land which prevent us from getting to or from our chosen piece of water. As with the argument made above, we would like to see section 14 applied more often, and if necessary strengthened in order to make it more fit for purpose.

6. Claims that access rights don't apply

The SCA has dealt with a number of cases where a land manager has informed canoeists or kayakers that access rights don't apply to a particular piece of water. The main place where this has happened, on numerous occasions, has been the Lake of Menteith. We find it disappointing and frustrating that nearly eight years after the introduction of statutory access rights in Scotland, the managers of one loch are still denying that there is a right of access to paddle on the loch. The SCA has made a point of promoting the message about taking biosecurity seriously and we entirely accept the need for paddlers to be aware of biosecurity procedures and take the necessary precautions before paddling on the Lake of Menteith, but this should not diminish the fact that there is a right to paddle on the water and that right should be strongly upheld. The SCA has been in regular contact with the access officers at the Loch Lomond and The Trossachs National Park Authority and we would like to point out that they have been attempting to resolve this issue.

7. Wild camping

There have been numerous media reports of "wild camping problems" since the introduction of Scottish access rights, so we would like to take this opportunity to express our views on this important issue. Wild camping is a vital and rewarding aspect of canoe and kayak touring, and always has been – even in the years before the 2003 Act. Wild camping is, by its very nature, practiced in small groups, using small tents, well away from public roads and infrastructure. The kind of camping that goes on (and went on for many years before the 2003 Act came into force) alongside Loch Earn, Loch Lubnaig and various other "problem" sites around Scotland can be described as "roadside camping", "congregational camping" or even "congregational roadside camping", but it is not "wild camping". In that respect, we are extremely disappointed at the media portrayal of wild camping, when the activity causing the problems is so far removed from the minimal impact activity enjoyed by so many recreational visitors to the countryside, including canoe and kayak tourers.

The SCA is appalled at the behaviour that has blighted the shores of Loch Lomond and other lochs within the national park, however we are highly concerned about the use of byelaws to resolve this problem. We are particularly disappointed that the

area covered by the byelaw extends well beyond the roadside areas where the problems associated with congregational roadside camping were being experienced. However, we believe that the use of a byelaw to override a traditional freedom that is enjoyed by many law-abiding citizens, and which has been made a statutory right by the 2003 Act, sets a dangerous precedent. We would prefer to see proper and robust enforcement of laws relating to litter, vandalism, drugs and alcohol consumption, rather than resorting to a blunt instrument like a ban on camping that criminalises someone in an unpowered craft wishing to camp peacefully on the side of the loch.

8. Coastal

Whilst passage on the sea is governed by marine laws rather than the 2003 Act, sea kayakers require terrestrial access rights in order to get to and from the sea, as well as to wild camp close to the foreshore. An increasing number of harbour trusts are now charging for launching and landing a kayak from their harbours, but this is extending, in some cases, to attempts being made to charge for launching from and landing on adjacent beaches. The access provisions in the 2003 Act extend to the foreshore, so we would like to see strict enforcement of the right to launch and land on beaches, and an immediate end to attempts to charge for use of the foreshore. This issue has serious safety implications as it is feasible that a kayaker may at some point go back out to sea in worsening weather conditions in order to avoid a landing fee.

An issue that has arisen on the islands has been crofters claiming access rights do not apply to their private beaches. This led, in one extreme case, to sea kayakers being ordered to get their craft off a beach and go back out to sea in the dark. There have been other examples of tensions on crofting beaches and there appears to be a need to communicate the message to crofters that access rights apply to the whole of the foreshore.

9. Enforcement

The SCA is disappointed that access authorities have not upheld access rights to the extent that we believe the law, and will of Parliament, suggest they should.

An analogy we often use is that drivers who regularly speed might claim the Road Traffic Act does not work because they break the speed limit. However, sooner or later those drivers will be caught for speeding and the Road Traffic Act will be shown to work. In a similar way, we have heard ghillies claiming the Land Reform Act doesn't work because they get away with frustrating canoeists trying to take access on their stretch of water. The Road Traffic Act is rightly enforced, and the SCA would like to see the access provisions in the Land Reform Act being enforced more rigorously by access authorities and the police so that those who try to interfere with its implementation are brought to account for their actions.

Another aspect of enforcement we wish to raise is that we would like to see a far greater commitment on the part of access authorities and local access forums to working within the terms of the Act and Code to resolve access disputes and local issues. The SCA has received reports of at least one access authority using unsubstantiated and publicly unavailable data to argue for greater restrictions on access, including a proposal to introduce byelaws. We believe that other legislation covering litter, dogs, anti-social behaviour and so on should be enforced more rigorously, rather than denying law-abiding citizens their cherished access rights.

Conclusions

The SCA believes that Scottish access rights are based on world class legislation that is delivering substantial benefits to those who take access to land, and also to those who manage it. The introduction of statutory access rights has taken recreation bodies in Scotland away from campaigning for rights and put us at the centre of the drive to educate recreational visitors to the countryside about access rights and responsibilities. We believe that this is helping the people of Scotland to reconnect with the land and moving us steadily, but surely, towards the situation in Norway where the nation grows up with a strong awareness of its rights and responsibilities.

This is a crucial time for access in Scotland and it is absolutely vital that progress made over the last twenty years is not lost. The SCA does not want to see a return to the days of campaigning for access rights. We want instead to see a greater commitment from government to celebrate and enforce the innovative legislation that was passed in 2003.

The actions of those who are reluctant to share a natural resource must not be allowed to stand in the way of the tremendous progress that has been achieved for the many people who wish to enjoy Scotland's great outdoors, both now and into the future.

The SCA is committed to working with others to find recreation management solutions to the issues that still exist, and as part of that desire to be involved in the ongoing process to implement Scottish access rights, the SCA would like to repeat its willingness to provide oral evidence to the LRRG as you consider this issue over the coming months.

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