



Scottish Natural Heritage
Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

PE1422/B

petitions@scottish.parliament.uk

c/o Ms Alison Wilson
Assistant Clerk to the Public Petitions Committee
Scottish Parliament

11 May 2012

Dear Ms Wilson

Written Response to Petition PE1422 - W. Barr

This petition is calling on the Scottish Parliament to urge the Scottish Government to consider the need to change the Land Reform (Scotland) Act 2003 to ensure equality for all.

Scottish Natural Heritage (SNH) offers the following response, as invited by the Petitions Committee. The Land Reform (Scotland) Act 2003 ('the Act') has been in effect since February 2005, and for brevity we will not set out here the full provisions it contains, which are already partly set out in the SPICE briefing. It is relevant to note that one of the Act's main provisions, the duty on each access authority to prepare a Core Paths Plan (CPP) for its area, is now well advanced with currently 26 authorities having adopted their CPP. For some 15 CPPs, the process has included any unresolved objections from the public being subject to an Inquiry process, carried out by the Directorate for Planning and Environmental Appeals (DPEA), with the Inquiry Report being considered by Ministers for confirmation before the authority adopts the CPP as directed by Ministers.

SNH had a particular role in relation to legislative process of the Act, in drafting and carrying out the public consultations on the Scottish Outdoor Access Code, (the Code') which was subsequently approved by parliament on 1st July 2004.

The petitioner raises three main points, and we address each of these as follows:

1. Inequality between the rights of landowners compared to those exercising the right to access land.

The Act is specifically structured to take an even-handed approach between these two sets of interests. Section 2 of the Act sets out how access rights are to be exercised responsibly; Section 3 of the Act sets out the 'Reciprocal obligations of owners', so this balance is established in the Act from the outset.

Similarly, the Code's approach is based on an equal balance, with the opening page stating that "the Code is based on three key principles and these apply equally to the public and to land managers". The layout of the Code then has a chapter 3 explaining

how people can exercise access rights responsibly, and a chapter 4 explaining how land managers can manage their land and water responsibly in relation to access rights.

There are significant elements both in the wording of the Act and in its practical implementation which provide for equality in operation. For instance, a major element of the Act (s.25) is the duty to establish Local Access Forums. These Forums are composed of representatives of land manager interests, in balance with those of access user interests and local authorities, and in several cases the Forums are chaired by a landowner representative. The Local Access Forums have been an effective part of the legislative package, in establishing working contacts, breaking down pre-conceptions, and fostering dialogue and mutual understanding across and between these interests.

Similarly, in relation to core paths planning, the Act in section 17(3) makes specific provision that in drawing up the CPP, the local authority shall have regard to the need to balance the exercise of access rights and the interests of the owner of the land. This provision has helped in generating dialogue and consultation in the CPP process across Scotland, for instance in identifying a preferable route from a farmer's operational perspective, so that the core path designation might then encourage recreational use onto that particular route to mutual benefit. Many authorities have taken this further through active installation of infrastructure like bridges or gates, in co-operation with the land manager.

The Act is not 'forced onto landowners/managers', but is a statute that has resulted from a full democratic and parliamentary process in the Scottish Parliament, with Royal Assent. It is also incorrect to say that "authorities will not deal with objections for landowners/managers", because in daily working, and as a matter of record in the core paths planning process, access authorities and their staff have expended enormous efforts in managing issues arising from all parties, working across the range of interests, to achieve sound and practical outcomes for all as far as practicable, in a professional manner.

Raising an issue with an access officer or through the relevant representatives on your local Access Forum is not a legalistic procedure. In relation to core paths planning, the public consultation process is non-legalistic and based on written representations directly from members of the public. Even where objections are unresolved and become subject to an Inquiry held by the DPEA, the Inquiry procedures have been designed so that in normal circumstances objections will be considered by the Reporter by means of direct written submissions and a site inspection. If there are more complicated issues that require an oral process, this will normally be done through a 'hearing', again to avoid legalistic or adversarial procedures as far as possible. Particularly for any parties who have had CPP objections over-ruled at Inquiry, this has represented a major saving, in comparison to the cost of losing a case in the courts.

The Act in s28 does make provision for judicial determinations, by summary application to the Sheriff Court. As costs have tended to be awarded on the standard 'loser pays' basis, this can prove an unpredictably expensive process. However, this is not an issue of equality - all types of litigants can be similarly affected including access authorities, interest and community groups and private individuals. There

have been eight cases relating to the Act taken through the courts in the seven years of its operation, a relatively small number.

2. Owners rights over who uses their property and how

This point on property ownership appears to underestimate the fact that, as mentioned above, the Act is statutory law, arrived at through a full democratic and Parliamentary process. As its title makes clear, it is a "Land Reform" measure, which re-defines by statute certain key aspects of what property ownership means in Scotland.

Even prior to the Act, the presence of rights of way in many areas often meant that public access on land was not entirely at the discretion of the owner/occupier, and the Act has established a clearer and more structured basis for the statutory access rights.

Abusive or criminal behaviour is of course not part of the rights of responsible access. Part 6 of the Code provides guidance on where to get help and information, again presented equally for any parties who may encounter irresponsible behaviour. Annex 1 to the Code provides a listing of the main types of criminal offences - noting that access rights do not extend to any of these activities - and these remain as previously a matter for the police.

3. Property values

This point interacts with the above point, in that the Act as a Parliamentary statute re-defines certain aspects of what 'private' land (including 'private access roads') means across Scotland. The effects of the Act as a land reform apply ubiquitously to property rights across the whole of Scotland, effective from the same date in 2005, and we are not aware of any evidence to suggest that property values dipped in 2005 as a consequence of this legislation.

The assertion that 'the legislation segregates rural and urban property ownership' is incorrect, and no such segregation exists. The Act states on the contrary in section 1(7) that *'the land in respect of which access rights are exercisable is all land except that specified in or under section 6'*. This is for instance why the Code is entitled the 'Scottish Outdoor Access Code' (rather than say the 'Countryside Code'), as it applies to outdoor land and water generally.

I hope that this response is useful for the Committee's considerations, but please contact us if anything further would be helpful.

Ron Macdonald
Head of Policy and Advice