



Ramblers Scotland
Kingfisher House
Auld Mart Business Park
Milnathort
Kinross KY13 9DA

Phone 01577 861222
Fax 01577 861333

Email scotland@ramblers.org.uk
www.ramblers.org.uk/scotland

PE1422/D

17th May 2012

Alison Wilson
Public Petitions Committee
T3.40
Scottish Parliament
Edinburgh EH99 1SP
petitions@scottish.parliament.uk

Dear Ms Wilson

Written response to Petition PE1422: Inequality of the Land Reform (Scotland) Act 2003

Ramblers Scotland welcomes the opportunity to comment on this petition regarding the Land Reform (Scotland) Act 2003. We were heavily involved in the passage of this Act through the parliamentary process, and have also been defenders in two court cases which considered the size of area in which access rights could be exercised around a private property, *Gloag v Perth & Kinross Council and Ramblers' Association*, and *Snowie v Stirling Council and Ramblers' Association*. We have not had any involvement in the case referred to by the petitioner.

1. Inequality of the Land Reform (Scotland) Act 2003

Statutory rights of access were established in 2003 by the will of Parliament, based on the existing rights, customs and traditions of access which already existed in Scotland. The legislation was passed following a democratic process which involved submissions from landowners and land managers as well as recreational interests. The legislation was drawn up following many years of discussion at the National Access Forum, which has representatives from land managing, recreational and government bodies, and the passing of this Act has achieved a balance of public and private interests. Therefore we do not accept that the legislation is inequitable.

A person only has access rights if they are exercised responsibly, and therefore any behaviour which involves irresponsible behaviour such as fly tipping, dog fouling, etc, does not fall under access rights and is dealt with by other legislation. It should also be recognised that such issues existed long before the access legislation was passed. If irresponsible behaviour continues to be a problem then the issue is a problem of

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enforcement of other legislation, rather than a fault with the Land Reform (Scotland) Act 2003. However, there is a huge advantage for landowners and land managers from having the Scottish access legislation, in that a framework has now been established to secure public access to land and water and to provide measures for resolving problems. The comprehensive Scottish Outdoor Access Code (over 130 pages) provides detailed advice for access takers and access managers to increase understanding and help in minimising any difficulties. In addition, if there are problems of irresponsible access, access authorities can work with land managers to design management measures which will assist with managing this access, such as signage, development of alternative routes, advice on fencing, etc. Furthermore Local Access Forums have been set up under the legislation in every access authority area, and exist to give advice on access issues. The Forum members are drawn from land management, recreation and community interests along with government bodies. If an access problem is found to be intractable, byelaws can be sought to deal with it as a last resort.

2. Property ownership

The ownership of land in Scotland is circumscribed by various restrictions, whether that is in relation to planning regulations, environmental legislation or access rights. The Land Reform (Scotland) Act 2003 s6(1)(iv) exempts sufficient land around a house to give landowners reasonable measures of privacy in that house and to ensure that their enjoyment of that house is not unreasonably disturbed. As mentioned above, this legislation was passed by Parliament and therefore represents the will of the Scottish people. Any problem with lack of police response to incidents is not an issue relating to the access legislation.

The legislation was checked for compliance with the European Convention of Human Rights and we believe that it meets the needs of the ECHR in terms of the right to respect for private and family life and home (Article 8), the right to peaceful enjoyment of possessions (Article 1 of Protocol 1) as well as the right to liberty of movement (Article 4 of Protocol 2) for individual citizens.

3. Property value

We have seen no evidence to suggest that the value of rural properties has been affected by access rights.

4. Core paths

It appears that this petition has arisen from perceived problems surrounding the core path planning process. Scottish access rights apply to most land and yet the majority of access is taken by walkers, cyclists and horseriders using paths. Scotland has the lowest density of paths in Europe, since the historic rights of way network was not afforded the same protection as footpaths in England and Wales received. Therefore, core paths were included in the legislation as a way of redressing the balance and delivering an increased path network for public benefit. Core paths could also be seen as a measure to help land managers to manage access on their land more effectively, since most people will use paths as their main means of accessing land and act in a predictable way. This enables land managers to carry out their operations more freely.

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Any core path designation follows public consultation with all interests and an adjudication by a planning reporter if the core paths plan has gone to a public inquiry. As mentioned above, access authorities are in a position to work with any landowner who feels management measures are required to deal with problems such as anti-social behaviour or wildlife disturbance which is caused by users of that path.

We trust this submission is helpful and would be happy to discuss any item in further detail if required.

Yours sincerely

Dave Morris
Director
Ramblers Scotland

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