

PE1422/F

Petitioner Letter of 14 June 2012

PE1422 – Inequality of land Reform (Scotland) Act 2003

Reply to SPICe

If Land Reform (Scotland) Act 2003 is formed on individual responsible access where is the equality to landowners/managers when “Access Authorities” objectives are for community/open public access. The Land Reform (Scotland) Act 2003 was not drawn up in an equal or fair way. The writer of ScotWays describes the advisory forum that assisted Scottish Natural Heritage and government with the legislation. He then describes landowning representation, however in the legislation landowners/managers refer to people who work the land, employ people to work the land and who earn a living from the land. But who considered the people whose property are a home and not an income and who are not part of a body or a member of a union. Considering that rural/countryside living is made up from the minority of the population and that minority can be broken up again to those that earn a living from the land and those that don't. There is no equality for this group of labelled landowners. When did the National Access Forum address this imbalance? Where is the equality and fairness when it is bodies that negotiate access for the members of their groups even though the legislation delivers on responsible individual access? Even core path systems are decided on what the public want and not individual access. Majority over minority. Modern society want their rights but don't want the responsibilities that go with the rights.

The Land Reform (Scotland) Act 2003 gives the minority of property owners no rights. Core paths do have an effect on property ownership and affects the quality and privacy of homes. Property ownership rights are deprived when compared to the rights given to urban property owners. Property owners are left dealing with maintenance issues and up-keep of their own private property that is being used by the general public. Dog walkers in particular abuse access rights by allowing dogs to foul paths. They regard paths as none public so they don't clean up after their dogs.

The Land Reform (Scotland) Act 2003 is unfair and unequal it does not give everyone an equal voice or equal rights. The legislation is difficult for the layperson. I don't have any legal experience but when dealing with the legislation you need the expertise of a specialist lawyer and this is expensive and out of the reach of most people.

Reply to the Scottish Human Rights Commission

An independent body why then can the Scottish Human Rights Commission not decide for themselves if individual human rights are/are not being violated especially up against Land Reform (Scotland) Act 2003 legislation. Surely Human Rights Commission should judge each case on its individual merits.

To the layperson Article and Protocol have little meaning. How does an individual ensure their rights without it costing an arm and a leg? Legislation out of the reach of most individuals because of legality terminology and the cost.

The Scottish Human Rights Commission's reply seems to contradict itself in view of the European Convention of Human Rights given that they quote the right to respect for private and family life and home as a legitimate aim. However Land Reform (Scotland) Act 2003 gives more rights to the access legislation and does not reflect similar rights to what is always classed as landowners/managers who clearly only have responsibilities.

Why does the Land Reform (Scotland) Act 2003 distinctly set out to label individuals/groups, people who live in rural/countryside locations if the legislation is to give everyone responsible access rights? Surely this distinction carries discrimination to those being classed as land owners/managers and breaches Human Rights as individuals and the rights the European Convention of Human Rights in particular Article 8 and Article 1.

The three issues raised by the Human Rights Commission:
Respect the interests of other people;
Care for the environment;
Take responsibility for your own actions.

And the responsibilities for the so called individual landowner/manager highlight what landowners/managers do and have done for centuries worked and lived in their choice of environment. For those who seek to access these areas it's a free rein to go where you like doing what you like and take offence to anyone who says anything differently. These highlighted issues do not give equality for all individuals by the Land Reform (Scotland) Act 2003 but reflect the responsibilities to the labelled landowners/managers and show the non-compliance with Human Rights and individual rights – to protect individual rights, the right against intrusion into individuals personal life, private life, family life and privacy at home.

The Land Reform (Scotland) Act 2003 does not reflect equality for all individuals. It counteracts individuals Human Rights by not providing the opportunity for fair treatment. It does not protect the rights of individuals to have a place where you can be yourself. It does not protect the individual to live in the manner as chosen and without interference from others. It does not provide equality on the issue of Responsible behaviour. It does not provide for the inequality that the Act infere's by the labelled distinction of groups of people reflecting intolerable responsibilities. Land Reform (Scotland) Act 2003 gives no rights to the labelled landowners/managers only responsibilities.

Human Rights Commission have not taken on their responsibilities to ensure equality with and for human rights and that of the legislation of the European Convention of Human Rights Article 8 and Article 1 of Protocol 1.

Human Rights Commission are failing all individuals as they are not addressing the inequalities of the Land Reform (Scotland) Act 2003. Individuals through the act are not being treated fairly or equally they are given only responsibilities.

In letter from Equality and Human Rights Commission you state that the issues raised to you are out with the scope of your remit being the impact of the Land Reform (Scotland) Act 2003 legislation on residents in rural locations surely this is a breach of Human Rights through discrimination, inequality and the breach of the European Convention of Human Rights Article 8 and Article 1.

Human Rights Commission is failing to respond to a breach of human rights and if independent should act on what they represent "to promote and protect human rights for everyone in Scotland".

Reply to Ramblers Scotland

First point that arises from the above Association's reply is that their aim is to have access to areas for walking for their members. This is not individual responsible access that the Land Reform (Scotland) Act 2003 refers to.

Their involvement with the two separate cases regarding access rights highlights the inequality of the legislation considering that individuals have had to deliver a case challenging local authorities and the Ramblers Association. Both bodies do not deliver on individual access. Local authorities have Access Teams but within these teams who addresses non-access if landowners/managers have rights, where is their representation? How can authorities be seen to be working impartially when all they address is access? The same can be said for the Ramblers Scotland. They deliver for their members and their aim is access. Working on majority not minority. This situation in itself highlights the inequality with the Land Reform (Scotland) Act 2003. It can also be seen from the adverts that are submitted to local newspapers that publicise Ramblers get together for walks. This is not individual responsible access.

Raising a case against access rights is costly. Authorities have their own legal teams and from the Ramblers Associate's involvement with the two cases mentioned have the funds and the means to defend their side of the involvement. Again this shows the inequality of the Land Reform (Scotland) Act 2003 as not all individuals can afford to raise a case through legal proceedings. And from the cases that have been dealt with how many of the individuals have had success over access rights? From objections raised from the consultation process few were changed the majority were over ruled. This disproportion supports the inequalities that lie with the Land Reform (Scotland) Act 2003. It reiterates that so-called landowners/managers have no rights only responsibilities. When the odds are stacked against you most individuals will be apprehensive to raise a case. This is inequality. If statutory rights of access are based on existing legislation why is it that landowners/managers have no rights but lots of responsibilities. Trespassing

did exist in Scotland. When did core paths become the new word for Right of Way? Core path and Right of Way have separate criteria's. When did core path supersede Right of Way? If the passing of the Act has achieved balance of public and private interests why are individuals voices not adhered to when they express rights.

The Land Reform (Scotland) Act 2003 gives access rights only if the person using these rights do so responsibly. With this section the legislation highlights what is deemed irresponsible use by individuals. This must include fly tipping, dog fouling, illegal parking breach of privacy etc. All these irresponsible issues do cause unreasonable interference with ownership of land and to the person/persons who have to accommodate irresponsible users. The onus is forced onto the landowner/manager to select how to deal with irresponsible behaviour. Acknowledging individual/s irresponsible behaviour directly and from personal experience has reflected in most situations hostile behaviour and verbal curtness that allows the individual/s to voice their rights of access but with no conscience knowledge of their responsibilities. Reporting irresponsible behaviour to the police reflects no real support. Incidents of irresponsible access and behaviour are low in priority for the police. As is the situation for the local authority who are only interested in access. They advise solutions but inform you that they cannot be responsible for unwelcome behaviour even though they have instigated these access paths through the legislation. All these issues reiterate the inequality of the Land Reform (Scotland) Act 2003. The responsibilities are put on the landowners/managers this is not fair or justifiable especially since they have no rights to address or change irresponsible behaviour only the responsibilities to live with them. All these actions for the landowners/managers reflect time and money and of course create interference with daily life.

Property ownership for most people does not just represent a home but an asset too. It is also a personal choice of where one wants to live and supports a selected life style. When buying property solicitors check boundaries and access rights through title deeds. For rural properties having sound access rights is perceived by the owner/occupier/buyer as essential. Having public access on your property does have an effect on its privacy, upkeep and market value. The reply given by Ramblers Association on core paths provides evidence of how established footpaths have been protected in England and Wales. However the Land Reform (Scotland) Act 2003 has given authorities legislation to reasonably develop path systems within their areas for public benefit. Why should individuals be asked to subsidise authorities on the provision of leisure facilities. Where is the equality in this? Individuals are being discriminated against by where they live and size of property.

The Ramblers reply also shows that there is no choice for landowners/managers only responsibilities for adapting to having the public use their land. Over all this response delivers evidence on the inequality of the Land Reform (Scotland) Act 2003. Land owners/managers are

discriminated against and have got to police public behaviour and deliver responsibilities for and to the general public.

Reply to ScotWays

The writer of this reply highlights the decision made by various bodies of the National Access Forum. Where and when was the right of individuals to decline the right of public access and who decides when a home would be determined as private? All bodies concern themselves with voicing the opinions of their interested parties but do not address individual rights. What is land? And who decides what qualifies as land and not private property. ScotWays writer states that there are two sides to a story. However in the case of the Land Reform (Scotland) Act 2003 there is no voice for individuals who are forced to adhere to this legislation. The writer comments on Access Forums and who makes up these groups. Personal experience reflects this group for my case was only interested in access for the bodies they represented and I have evidence that this was the case. Where therefore is the equality with this legislation? There is nothing wrong with individuals exercising responsible access rights as long as they adhere to the code. However core path planning is a different matter. Linear is the term the writer uses to describe these paths but these linear paths sprout arms and legs. How do you decide on who is a landowner/manager? This terminology is historical and classist. If you look at any housing scheme, estate, town or village you will see that these properties boundaries are distinctly marked by some form of fence, hedge, wall, trees and many are secured by gates. This is the owner/occupiers way of demonstrating the ownership of the property and the exact size of what is deemed theirs. These boundaries give the owner/occupier privacy and choice within the property. They are under no obligation to give access to others. Why have these properties not been included in the legislation? If individuals have responsible access over any land, waterways why have these landowners/managers not been included within path planning? This is discrimination to those who do not reside in these particular environments. Rural dwelling is being penalised for increased urbanised society members. All those bodies that agreed on the Government's legislation were so fixed on access that the real practicality for rural dwellers was not fully thought out. The writer described the balanced approach to the creation of core paths on principal this all seems workable but in reality Access Authorities made it a paper exercise. Information from individuals has highlighted that path plans were drawn up then consulted on as a show of courtesy to those whose property was being taken for core paths, as was the process for outstanding objections.

The writer has supplied background information that led to the Land Reform (Scotland) Act 2003. Here decisions are being made from bodies that have based opinion on a majority. Considering that rural/countryside residents are in a minority this supports that the Land Reform (Scotland) Act 2003 has not been drawn up in a balanced manner. Too much emphasis has been put on general public interests. The writer replies on the question of anyone not behaving responsibly when exercising access rights. The writer acknowledges that through the Scottish Outdoor Access Code that they forfeit

their rights. In principal this seems equitable. The reality is that it is not practical and very unreasonable to put this policing issue onto private individual/s. Opinions voiced from others in similar situations and from a case on the Internet and from personal evidence shows the police are moving to the side that these incidents are a civil matter and not a police matter. Again responsibilities are being put onto landowners/managers. Dealing with irresponsible issues is time consuming, costly and does interfere with the quality of home life and privacy.

The writer throughout this reply has reiterated the inequality of the Land Reform (Scotland) Act 2003 and the impracticality of the Scottish Outdoor Access Code towards the landowners/managers. The onus is put on these people to deal with all the responsibilities but gives them no rights. Engaging lawyers to pursue any sort of justice is time consuming and expensive but why should they have to?

Reply to Scottish Natural Heritage

In reply to the points raised by Scottish Natural Heritage point 1 presents the inequality of the legislation. Section 2 may acknowledge how access rights are to be exercised. However section 3 gives the responsibilities put on the landowners/managers to deliver this legislation without choice. How can something be equal when one side is forced to give on every aspect of the legislation? The onus is put on landowners/managers to ensure access is done so in a responsible way. There is no choice for landowners/managers only responsibilities. How is this balanced or equal?

The establishing of Local Access Forums does not provide balance but gives inequality. The very name declares this groups interest and that is access. These groups deliver on the interests of the people they represent who are looking for access. The majority of people live in villages, towns and cities in comparison to those who live in rural/countryside properties this is not equal or balanced.

If the act is not forced onto landowners/managers why is it that they only have responsibilities and no rights. What and how does anyone interpret the term "Reasonable"? If something is not suitable why are landowners/managers put in a position where they have to justify that decision? Why do they have to go through a process of elimination to be over ruled by hearing after hearing? The inequality to landowners/managers is that raising an objection takes up valuable time and money. The cost of legal action is too costly for most. The legislation is unfair in this section. If it were an issue for gaining access whether it is responsible or irresponsible the local authority and bodies such as Scottish Natural Heritage, Rambler Association, and ScotWays etc would not hesitate in taking legal action on behalf of this issue and with standing the costs. This is not equal or balanced legislation this is selective. The whole process camouflages the situation you can have your say but not your rights.

What is the point of wasting money and time looking for fairness and equality when it does not exist?

What does property ownership refer to within Scotland? The Act gives no guidance to this situation. The Land Reform (Scotland) Act 2003 does not supersede all other Scots law. The legislation is discriminating against anyone who owns anything bigger than a postage stamp. The legislation with its responsibilities for landowners/managers does put the onus on these people to police their own property.

Most people exercising their access rights do so with little or no knowledge of the Access Code. They think they have access to where ever they want and that no one can stop them. The inequality of the legislation can be seen from the number of supporting bodies that deal with access for the groups they represent. And these bodies will challenge access situations that arise on behalf of their members. This act in itself highlights the inequality of what the legislation represents, individual responsible access. The legislation is forcing landowners/managers to accept public access onto private property. The legislation gives too much power to authorities that are using it to enrich their own portfolio of leisure to and for the general public. They are using the legislation to profit on access rights to rural private property areas that will preposs in future planning development for and within authorities. Public funding is being used in a partial manner to deliver a service that is not equal to all residents within council boundaries. Public funding is being used to pay for Access Teams and legal services to provide a partial service to selected residents of the communities that they serve. As there is no equality with this service should councils be delivering it? Councils do receive funding for the provision of public leisure facilities. Provision should be managed using public funding and not through the encroachment of individuals private properties. The legislation is not fair or equal to those who have to adhere to it. The Scottish Outdoor Access Code explains your rights and responsibilities. Again the onus is on the landowners/managers to either police their own property or decides what is a criminal offence. The legislation is unequal it openly invites the general public to access the outdoors then leaves the responsibilities to the landowners/managers to police its legislation. And in doing so gives them no rights to deal with unwelcome situations. This puts them in the front line of forced voluntary public servitude.

The economic crises have seen a drop in property buying and selling. Land prices for housing reflect that land is more valuable. Having a core path, Right of Way or any path system allowing public access does have an effect on property value and who will want to purchase it. Buyers will be put off by public access especially on rural properties. Estate agents websites and information do not agree with writer's comments on property value. The legislation is giving nothing to the people who are giving the most.

Reply to Environment and Forestry Directorate

The writer of this reply in the first instance misinterpreted the petition and provided a response to my personal case. The petition was put forward to the Committee to address the inequality of the Land Reform (Scotland) Act 2003. However the writer's response highlights the need for the petition to address

the inequalities shown to landowners/managers. There are two sides to a story however within the legislation this is not the case. All replies have reiterated the same conclusions but few have addressed the real issue of inequality.