A Brief History of Access Rights

History of Access · https://scotways.com/ken/a-brief-history-of-access-rights/

In the Beginning

When humans first left the African continent over 220,000 years ago to investigate and ultimately settle across the whole world, they took with them a sense of curiosity and a spirit of adventure.

Attempts to restrict where people could go have been happening for centuries and these early disputes were often referred to the church for resolution such as rights of access to a millpond near Colinton in Edinburgh (1226) or the way to the Kirk between Ravenshaugh and Newbigging in the Pentland Hills (1675).

In 1884 the “Pet Lamb” case reached court. This intriguing trespass case involving a lamb’s unauthorised grazing of a neighbour's land is regarded as a cause célèbre for the right of access. This ridiculous case made it all the way to the Inner House of the Court of Session but it established that a successful interdict for trespass requires actual material damage to occur. Whether this “outrageous proceeding”, as Lord Young put it, influenced James Bryce is unknown but, also in 1884, the MP for Tower Hamlets and ScotWays Director introduced the first Access to the Mountains (Scotland) Bill.

> "Many thousands of tourists go northward every year in quest of beautiful scenery. They are confronted with a fortification of strong fences, and locked gates, resolute gamekeepers, men of action, and the terrors of the law.
>
> *(The Times, March 25th 1884, commenting in a leading article on the Access to Mountains (Scotland) Bill, introduced by James Bryce on February 28th that year)*

Access to Mountains (Scotland) Bill 1884

Clause 2 of Bryce’s Bill said – “ … no owner or occupier of uncultivated land in Scotland shall be entitled to exclude any person from going on such lands for recreation or scientific or artistic study, or to molest him in so walking.” The bill was debated but didn’t find sufficient support to progress to become an Act.

Bryce tried again in 1888 and the same year supported a Bill to get improved outdoor access in Wales. Neither succeeded.

In 1892 Bryce tried again and this time the bill found favour, not enough to succeed, but it did persuade the ruling Tory party to propose their own Bill, based upon Bryce's work. Unfortunately, a general election was called in June of that year and the Bill proceeded no further.

1898 saw James Bryce introduce his Bill for the last time before he handed the baton over to his younger brother Annan Bryce who introduced the Bill in 1900, 1906 and 1908. This latter attempt saw the reach of the Bill extended to the whole of the U.K. and it achieved a second reading. Unfortunately, progress slowed and eventually reached an impasse following which the House agreed to not pursue the Bill further.

Access to the Mountains Act 1939

The next four attempts also had no success, but that changed when Arthur Creech-Jones introduced his Bill in 1937. This time the Bill was accepted and it made its way through the Committee stages, although not before it was massively changed. When it emerged as the Access to the Mountains Act 1939 simple trespass had become a criminal offence. Fortunately, the Act was never implemented and, even better, it didn't apply to Scotland. It was repealed in 1949.

There Shall be a Scottish Parliament.

The 1970s and 1980s saw further bills introduced, but it was the 1990s when progress really started to happen in Scotland - the Letterewe Accord, the formation of the National Access Forum and, most importantly of all, the re-creation of the Scottish Parliament in 1999.

That huge political change was the push that was needed to make our right of access to land a reality. It was very nearly a different story. The 2001 Bill was tilted firmly in favour of land managers and access users were up in arms about it. However, something worse appeared on the scene to focus people's minds. Foot and Mouth Disease reappeared.

The effects of that awful disease were felt far beyond the farming community. Tourism was badly hit by the negative publicity surrounding the outbreak and by the many unnecessary land closures as people tried to prevent the spread of the disease. Some landowners tried to prevent access to land long after it was necessary and this helped to change radically what was a very poor Bill for access users into one that was much more pro access users.

The dream becomes reality.

121 years later and with our own Scottish Parliament, Bryce's dream became a reality. On 9 February 2005, Part 1 of the Land Reform (Scotland) Act 2003 came into operation creating a right of access to all land and inland water in Scotland.

The fact that it has taken over a century for the Act that Bryce originally envisaged to come into effect is testimony to the efforts of those who have believed in it. Interestingly, Bryce only wanted a right of access on foot and only to the uplands. What we have now covers all non-motorised transport and covers all land and inland water.

Our hard-won right of access is subject to responsibilities. In fact, if you don't exercise your access rights responsibly you have no right of access. Make sure you know what your rights and responsibilities are!

Was the creation of access rights the correct decision? It would appear so, as there have been no legal challenges to the actual Land Reform Act itself.

A Right to Roam?

Although often referred to as "the right to roam", it is not only a right. It comes with responsibilities and would be better referred to as a "right of responsible access". However, the term "right to roam" has now been used in a number of court judgements by Lord Carloway (*Renyana Stahl Anstalt* case) so perhaps it is acceptable to call it a "right to roam"

Timeline to our right of access

Right of responsible access timeline.