The Coming of Statutory Access Rights

History of Access · https://scotways.com/ken/the-coming-of-access-rights/



Some of the many outdoor access reports which proliferated in the 1990s.

Monday 23 January and Saturday 25 February 2023 mark 20 years since the passing of the Land Reform (Scotland) Act 2003 and its receiving Royal Assent. The Act made radical changes to outdoor access, putting on a statutory basis the right of access to be on, above or below most land and inland water in Scotland. Access rights now seem so normal that it is hard to believe it is such a short time since they came into being, and yet from the enquiries that reach ScotWays there are still plenty of land managers who don't recognise that they have a reciprocal duty to manage the land responsibly as regards access and so block access or put up illegal signage. Likewise, there are those who do not recognise that they only have rights of access under the Act provided they act responsibly so as not to cause unreasonable interference with the rights of others, whether

landowners or other access users.

It is thanks to the work of various members of the ScotWays board at the time that the Act incorporates reference to rights of way as part of the outdoor access picture. The 1990s was a busy period for outdoor access.

In 1997, Scottish Natural Heritage (now NatureScot) was charged by the Scottish Office with the task of advising on possible changes to the law relating to access to the countryside. The National Access Forum concluded that the new Scottish Parliament should pass legislation giving the public the right of access to land and water in Scotland for informal recreation and passage, subject to responsible behaviour.

> *'The Scottish Parliament should introduce a right of access to land and water, exercised responsibly, for informal recreation and passage. This right should be one part of a balanced package which includes codes of behaviours, a major programme of education, obligations on local authorities and land managers, better mechanisms for facilitating and managing access, and a co-operative approach in which the needs of all interests are respected.'*
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> *National Access Forum Recommendation.*

A white paper was published in July 1999 on legislation for land reform that included access to the countryside. Interestingly it 'recognised that the creation of a statutory right of access will not itself create greater opportunity for the public to enjoy the countryside and that facilities will be required to achieve this' hence the inclusion of the concept of core paths networks.

The role of rights of way in the 1999 proposals was not entirely clear although it seemed certain that they would be components of the core path networks. It was proposed that local authorities should make maximum use of the ScotWays Catalogue of Rights of Way and that all recorded rights of way be part of the core path networks.

There was much slippage in the timetable and the draft bill was not published until February 2001. Whilst awaiting the bill, the National Access Forum was meeting regularly to work on the draft Scottish Outdoor Access Code which would define responsibilities although the Code could not be finalised until the draft bill was published and the detail of the legislation known.

The published draft Parliamentary bill departed greatly from the balanced approach which had emerged from prolonged consultation and discussion at the National Access Forum. Some outdoor organisations felt that Scotland would be better off without it.

An unexpected ally that helped redress the balance was Foot and Mouth Disease in 2001. During the outbreak there was a remarkable level of cooperation in Scotland between the farming and outdoor recreational communities, culminating in the launch of the 'Comeback Code'. The public demonstrated that they were well able to follow advisory signs and advice without the need for the draconian measures proposed in the draft Bill.

ScotWays wrote to all its members with a more detailed analysis, inviting them to write to the Scottish Executive to express any concerns or make any constructive suggestions during the consultation period. ScotWays also pushed for the law on rights of way to be reformed, but the general enthusiasm for the new universal right of access made some commentators wonder why spend time looking at what had been described as 'the failed system of rights of way' and that 'rights of way would wither on the vine'.

The large number of responses to the draft bill caused even more slippage and it was November 2001 before the draft bill was introduced into Parliament. This version was a great improvement on the consultation draft issued in February 2001 but there were still concerns about the relationship between the new access rights and existing rights of way.

The committee stages saw over 270 amendments considered, more than any bill previously introduced to Parliament, with the majority referring to Part One (the access rights section) of the draft Bill. ScotWays worked with MSP Bill Aitken to table amendments as well as attending meetings with officials and lawyers from the then Scottish Executive.

The final part of the committee stages - stage 3 - was debated in November 2002. In January 2003 the Bill was passed by the Scottish Parliament and on 25 February 2003 it received Royal Assent.

Access rights were not yet operational as the Scottish Outdoor Access Code had to be in place before that could happen and work continued on it apace. It would be well into 2004 before it was finally ready for approval by Ministers and February 2005 before access rights came into effect.

Writing in the ScotWays Annual Report and Newsletters for 2003, both Chair George Menzies and National Secretary Sandy Valentine paid tribute to retiring chair Bruce Logan who had spent an "inordinate amount of time in dealing with the legislative proposals on access, in drafting proposals, convening meetings of the legal committee and attending innumerable meetings of a whole range of bodies that are interested in the outcome." Thanks to the work of Bruce and others including directors Donald Bennet, James Gay, Bob Aitken and many, many of our members, not only are our access rights the best in Europe, but rights of way received a boost, including the application of the new powers for dealing with obstructions, dangerous impediments

and other safety issues, the expansion of the remit of local access fora to include rights of way and the extension of the new and much less expensive summary Sheriff Court procedure to be used to determine rights of way.

See also A Brief History of Access Rights and Right to Roam Timeline.