

Note of meeting

Roundtable discussion on access, 25 April 2017, Scottish Parliament at 13.00-14.15

Introduction and context

The meeting was opened by Richard Lochhead MSP who explained that he had been involved in a number of access cases in his constituency in recent years which had proved difficult to resolve, and this had led him to question whether the Scottish access legislation was fit for purpose. While the legislation is generally seen to be working well, many people accept that there are a number of issues to be addressed in its implementation. The key purpose of the meeting was therefore to discuss whether the remit of the Scottish Land Commission (SLC) should include a review of the implementation of the legislation as part of its first strategic plan.

Brendan Paddy of Ramblers Scotland highlighted that outdoor recreation, underpinned by Scottish access rights, is fundamentally important in delivering many government priorities relating to health, tourism and sustainable economic growth. While the legislation and Scottish Outdoor Access Code (the Code) are well respected, and the support from landowning interests with regard to their delivery has been widespread, the experience of those enjoying outdoor recreation is that where problems arise, it can be very difficult to resolve these issues and a review of the factors which lead to this situation would be very useful. In addition, core path networks can play a role in increasing participation but there are many outstanding issues relating to their accessibility, maintenance and promotion.

Andrew Thin of the Scottish Land Commission explained that the SLC was in the process of establishing itself and producing a 3-year strategic plan which he hoped would be laid before parliament by the end of September. The SLC is currently visiting all parts of the country to understand the strategic context it is operating within. It was likely the SLC would focus on 'productivity', ie, making the most of Scotland's land for the benefit of Scotland's people, in social, economic or cultural terms, as the context for its remit. Changes to legislation can take a long time and a lot of effort, changes to policy are less difficult but also take time. However, working to change behaviour through the production of guidance and codes is much easier to initiate and could be a focus for the SLC's work.

Summary of key issues which arose during discussion

The role of education / dealing with irresponsible access

Concerns were raised around the implications of irresponsible access-taking, such as uncontrolled dogs, which can often have a financial consequences for the land manager involved.

It was noted that recreation bodies take great efforts in educating their members and the wider public about responsible access on all topics, on an on-going basis, and that SNH is also continuously involved in long term education work relating to the Code. The Code provides key messages which have been agreed by all parties, and these can be used in educational materials to produce a consistency of approach. There was one suggestion that a review of the Code may be needed given the fact it had been in place for over a decade.

With regard to dogs in particular, the National Access Forum (NAF) has spent a lot of time discussing responsible dog ownership with the result that there is plenty of guidance and good practice already

available, although clearly education is an on-going effort. It was also noted that a very high proportion of people who take regular exercise do so with their dogs, and so there are clear links to health benefits from this activity.

Given that access rights only apply if a person is acting responsibly, it is important for land managers and access authorities to be aware of other mechanisms to be used in the case of irresponsible behaviour, including legislation to protect livestock.

Conflict resolution

Although the number of access problems is relatively small across Scotland, many of these cases can be protracted and particularly difficult for access authorities to resolve, leading to a lack of enforcement of the legislation. This can lead to a perception that the legislation is being undermined and the public and land managers can lose confidence in it.

There was a recognition that the majority of people want to do the right thing and those who aren't acting responsibly can be helped to change their behaviour. It was emphasised that rights and responsibilities are reciprocal and apply to everyone, and Andrew Thin made it clear that the forthcoming Land Rights and Responsibilities Statement would be framed in these terms. In every sector there is a minority of people who behave irresponsibly and we need to think about how to influence and marginalise that minority. If guidance is developed to resolve issues within a sector then that culture begins to change for the better and the sector becomes self-policing, so that the minority who are causing problems are marginalised by their peers. It was felt that NAF produces guidance on responsibilities in various situations so there may not be a need for further guidance at this stage from the SLC, although there is a role for NAF and the SLC to work together.

If a land manager refuses to remove an obstruction, ultimately the only option for an access authority is to go to the sheriff court. Legal cases can be costly and unpredictable in outcome, so this has led to a paucity of legal casework to guide the resolution of access issues elsewhere. There is a long-recognised difficulty in enforcing s.14, which calls on access authorities to prove that an obstruction is there for the purpose or main purpose of preventing access. As a result there have been only been 6 legal cases relating to s.14, and just one since 2009.

Local Access Forums (LAFs) can play a key role in advising access authorities on issues, but they do not always have the capacity or knowledge to carry out this role. Also, they are not legally structured to have more than a mediation (rather than an adjudication) function. It was generally agreed that LAFs across the country could be better supported so they are enabled to take part in resolving conflicts through a mediation role where possible, but many LAFs already have a long list of unresolvable problems which cannot be taken any further without going to the sheriff court. In addition, it was noted that the presence and capacity of LAFs across the country is not consistently strong, which is ultimately a resource issue as an access officer may not have the budget or time to fully train and support the LAF and attract knowledgeable members. However, it was agreed that where possible the LAF should be the first step in helping with the resolution of a particular issue. If that fails, there may be scope for a further process of arbitration or tribunal hearing to be introduced, rather than going straight to the sheriff court. Such a tribunal body could be made up of people with experience of access issues, unlike some sheriff courts, and a less adversarial approach would be useful to enable each party to engage more readily and at a lower cost.

Parallels were drawn with the Children's Panel process which also involves volunteers and provides a hearings process, and forms a distinct next step between mediation and legal action. Such a tribunal process may be useful in helping to unravel particular issues of long standing, such as those related to the difficulties in enforcing s.14. There was a general agreement that an investigation into how a tribunal process might fit into the existing circumstances would be very useful, and that this may be a role for the SLC to take on.

Prioritisation and resourcing of access

The resource constraints faced by access officers can lead to capacity issues in, for example supporting LAFs, maintaining paths, liaising with landowners or trying to resolve access problems.

It was accepted that budgets across government are tight and will continue to be so, but the main problem is the lack of priority within access authorities given to the resourcing of access. For example, road networks have their own budget but not path networks. When access is so fundamental to the delivery of other government priorities, relating to health and wellbeing, tourism and the rural economy, there needs to be a stronger recognition of this link. Although local authorities make their own budgetary decisions, encouragement by the Scottish government for the central funding allocation to be spent on access would be helpful. One result of the lack of prioritisation of access is that access to the outdoors is often inequitable, as evidenced through a recent audit of Scotland's official long distance routes, Scotland's Great Trails, carried out by the British Horse Society Scotland. This found that none of the 28 routes was suitable for multi-use. In particular there were barriers on these routes faced by horse riders which would also have implications also for buggies, prams, cyclists and the less able who were trying to use the routes.

Review of current issues and existing legislation

It was suggested that a review of the implementation of the legislation would be a useful process in itself in terms of raising the profile of access more generally amongst the public and with decision-makers. Such a review would help to identify causes of the non-resolution of specific long-standing issues, although it's also possible that this could be achieved through setting up the tribunal process mentioned above. Any review could also highlight other areas where different government priorities are working against access, such as agricultural policies on greening, and help to find a solution.

It was suggested that there might be an overview of existing case law as this could be useful in giving a national perspective on those conflicts and the lessons learned from each case. There is currently a NAF-led update being carried out on recent Occupier's Liability case law, and there is a current s.14 appeal case which may have important implications once it is finalised.

Attendance list

Richard Lochhead MSP

Andrew Thin, Chair, Scottish Land Commission

MSPs in attendance

Finlay Carson MSP

Graeme Dey MSP

John Mason MSP

Edward Mountain MSP

Organisation/affiliation	Name
British Horse Society Scotland	Helene Mauchlen
Cairngorms National Park Authority	David Clyne
Falkirk Council and Local Authorities NAF contact	Angus Duncan
Developing Mountain Biking in Scotland	Lee Cousins
Forestry Commission Scotland	Kevin Lafferty
Loch Lomond & Trossachs NPA	Bridget Jones
South Lanarkshire Council and Local Access Forums NAF rep	Simon Pilpel
Moray Council	Ian Douglas
Mountaineering Scotland	David Gibson
National Farmers Union Scotland	Gemma Cooper
Ramblers Scotland	Helen Todd
Ramblers Scotland	Brendan Paddy
Ramblers Scotland	Danny Carden
Scottish Canoe Association	Eddie Palmer
Scottish Government	Gareth Heavisides
Scottish Kennel Club	Ed Hayes
Scottish Land & Estates	Karen Ramoo
SNH and NAF Secretary	Rob Garner
Scottish Outdoor Access Network	Sue Hilder
Scottish Sports Association	Louise McIntyre
Scotways	Eleisha Fahy
Southern Upland Partnership/ Former NAF Convener	John Thomson

Apologies from organisations

NAF Convenor, David Henderson-Howat

Cycling UK Scotland, Paul Timms