Local Government Committee

3rd Meeting, 2002 (Session 1)

Tuesday 22 January 2002

The Committee will meet at 2.00 pm in Committee Room 1

1. **Items in private**: The Committee will consider whether to take items 3 and 4 in private.

2. **Land Reform (Scotland) Bill**: The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   COSLA:
   Councillor Andrew Campbell, Rural Affairs Spokesperson and Convener of Dumfries and Galloway Council
   Bob Christie, Head of Policy, COSLA
   Jon Harris, Director of Policy and Legislation, COSLA
   Bob Reid, Assistant Director, Planning and Strategic Development, Aberdeen City Council
   Bob Shannon, Head of Planning Policy and Europe, Highland Council

   Stirling Council:
   Richard Barron, Access Officer
   Donald Balsillie, Countryside Service Manager

   West Dunbartonshire Council:
   Councillor Iain Robertson, Convener, Economic, Planning and Environmental Services
   David Hill, Section Head, Forward Planning and Regeneration

   Highland Council:
   Councillor Sandy Park, Chairman of the Planning, Development, Europe and Tourism Committee
   Geoff Robson, Head of Environment
   Alex Sutherland, Access Officer
   Bob Shannon, Head of Planning Policy and Europe

   Argyll and Bute Council:
   Debbie MacKay, Senior Planning / Development Officer (Economic Policy)
   Rona Gibb, Access Project Manager, Argyll and Bute Core Path Network Project
3. **Public Appointments (Parliamentary Approval) (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

4. **Scottish Public Sector Ombudsman Bill:** The Committee will consider a draft Stage 1 report.

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The following papers are attached for this meeting:

**Agenda item 2**

- Submission from COSLA  
- Submission from Stirling Council  
- Submission from West Dunbartonshire Council  
- Submission from Highland Council  
- Submission from Argyll and Bute Council

**Agenda item 3**

- Public Appointments (Parliamentary Approval) (Scotland) Bill – Summary of Evidence [PRIVATE – to follow]

**Agenda item 4**

- Scottish Public Sector Ombudsman Bill – Draft Stage 1 Report [PRIVATE – to follow]

The following papers are attached for information:

- Minutes of the 2nd Meeting 2002
LAND REFORM (SCOTLAND) BILL

COSLA WRITTEN SUBMISSION TO THE LOCAL GOVERNMENT COMMITTEE

1. COSLA welcomes the opportunity to make this written submission to the Local Government Committee at Stage 1 of the Land Reform (Scotland) Bill. COSLA and its member councils have been particularly active in the debate leading up to the publication of the Bill. We will be submitting more detailed evidence to the Justice 2 Committee at Stage 2 and would also welcome the opportunity to provide oral evidence to the Justice 2 Committee on the Bill.

Part 1 ACCESS RIGHTS

2. COSLA welcomes the broad thrust of the proposals relating to access and recognises the substantial improvements made to the Bill in its current form. COSLA notes the new version of the introduction to the Bill and has concerns about some of the new wording. COSLA would prefer to see this Bill confirming access rights rather than conferring. Many people in Scotland believe that they have this right already. COSLA also notes the introduction of the word regulate, and would prefer to see the emphasis being placed on management………. hence “confirm and manage public rights of access” should be the purpose of the Act.

3. In COSLA’s earlier submission to the Executive we sought assurances that local authorities would be given ‘direct and adequate funding’ to meet their new responsibilities. We welcome the information in the financial memoranda but we believe that there is a need for further clarification from Ministers on this matter.

4. Whilst the aims of the Bill relating to access are fully supported, it would fall on local authorities to make the Bill work. It is in this context that COSLA will be proposing a number of amendments. The most significant changes are:-

4.1 COSLA sought two new duties in it’s earlier submission – “a duty to plan for and facilitate a responsible right of access and a duty to create and manage core path networks”. The first of these duties is contained within the Bill but not the second. We believe that this is a serious omission. Without a clear duty to implement the planned networks, there is a danger that real difficulties will emerge on the ground.

4.2 COSLA welcomes the wider statement of process regarding Paths and Core Path Networks set out in sections 17 & 18, but would welcome the opportunity to develop these further, with the Executive’s officials. There are issues about the ‘2 year’ timetable, which require clarification, because it is likely that some authorities will not be able to complete all the work in this time. The relationship to the development plan must also be clarified. This also clearly relates to the omission of a duty to implement the Plan (see 4.1 above).
4.3 COSLA has concerns about some of the legal definitions of Curtilage. There are clear problems with the clause at 6(b)(iv) which states that curtilage, in relation to a house, relates to "sufficient adjacent or associated land to enable a persons living there to have reasonable measures of privacy and undisturbed enjoyment of the whole". This undermines the wider accepted and tested definitions of curtilage and should be dropped. There are also fears that unless guidance (interim if necessary) is given regarding farm steadings then there will be many difficulties to deal with. COSLA has accepted that farm steadings should be seen as curtilage, but also believes that this should not be used as reason to close routes unless alternatives around a steading have been found.

4.4 COSLA has concerns about some of the legal definitions of Liability. In the Act there has to be a much clearer statement about liability. It is felt by COSLA that in dealing with responsible access, the access code should give guidance on liability issues which bear on responsibility. It should stress the need for persons exercising access rights to bear personal responsibility for their actions, be correctly clothed, etc. It should also contain guidance that persons exercising access rights across land can, and often will, encounter risks from weather, ground conditions, the physical nature of the terrain, etc.

4.5 Conducting a business – we are concerned about section 9 (2)(9) excluding business and commercial activity on the basis of this exemption, the activities of outdoor centres, trekking companies etc could be excluded from the access rights. Given the significance of tourism in Scotland and the difficulties in policing or enforcing this section we believe that this exclusion should be dropped.

4.6 COSLA questions why it is necessary for Ministers to have the power to alter the fundamental sections of the Act at 1, 2 & 3. Clearly, it is quite normal that Ministers reserve the power to make Regulations. In Part 1 of this Act, the access code serves this purpose. However, Sections 4 and 8 go much further that this and give Ministers a much wider power to alter fundamental sections of the Act, without reference to Parliament. As a matter of parliamentary practice, this is extremely unusual. It is suggested that these sections should be deleted unless clear reasons can be demonstrated why they are necessary.

Parts 2 and 3 COMMUNITY RIGHT TO BUY AND CROFTING RIGHT TO BUY

5. COSLA strongly supports the case for Land Reform. Highland Council, for example, has direct knowledge and experience of community land purchases, and their experience has shown that communities taking responsibility for land ownership and management have secured significant benefits. We welcome the changes made to the earlier draft Bill in respect of lotting, broadening the right of appeal, additional anti – avoidance measures and no restrictions on subsequent disposals.

6. We remain concerned, however, that the proposals in the Bill are too complicated and inflexible and are therefore unlikely to be taken up to any great extent by rural communities. COSLA supports the following changes in the Bill which are being promoted by Highland Council.
Community right to buy

6.1 Eligible community body – The proposed requirement for interested community members to set up a specific company limited by guarantee to register an interest in a precise area of land is too bureaucratic and fails to allow for other options already successfully applied.

- Existing bodies and organisations representative of local communities should be able to register a general interest in land within their area, for example, Community Councils, Local Enterprise Companies, Local Authorities. Other types of community body, including Partnerships (e.g. Knoydart Foundation), Trusts (e.g. Isle of Eigg Trust), Companies Limited by Shares, should be acceptable.

6.2 Community area – Basing the definition of communities on polling districts will cause difficulties where such districts do not properly reflect the local COMMUNITY OF INTEREST. For example, Eigg is within a polling district encompassing all four of the Small Isles, and the Loch Shiel jetties extends over five polling districts.

- Community areas should be defined on the basis of detailed postcode units, building up to form the community of interest. This should be on a self-determining basis, subject to an appeals procedure to the relevant local authority where communities in adjacent postcode unit areas consider they should be included (or excluded).

6.3 Membership and balloting – A minimum membership of 20 persons continues to fail to take account of the small nature of many rural communities. A minimum 50% response to a local ballot on whether to proceed with purchase is likely to be onerous, especially if linked to registered electors within polling districts.

- The minimum membership of community bodies should be reduced to 10. A simple majority of a poll within the community area should be sufficient to demonstrate local support for land purchase, as in General Elections.

6.4 Registration – A land area for which a community registers an interest may not come onto the market for decades (if not centuries), yet renewal of interest is expected every five years. Late registration after land comes onto the market is only permitted on an "exceptional" basis.

- Any need for renewal of interest should simply be by written reiteration. Late registration by communities after land comes onto the market should be generally possible (the recent case of the Island of Gigha showing how important this provision will be).

6.5 Ministerial Discretion – There are far too many instances where decisions can be taken at "ministers’ discretion”.

- The basis for decisions made at ministers’ discretion should be in the public domain in the form of relevant guidance.

6.6 Valuation – Taking into account any “peculiar interest” of a person in the valuation of land could distort the price well above what could be considered a general average.

- The land should be assessed at what can reasonably be accepted as customary and typical values for land in the area.
6.7 Compulsory Purchase Powers – Existing CPO powers are inadequate.

✓ There should be enhanced powers for compulsory purchase where land is a key area of strategic importance for a community development or a last resort in cases where a landowner displays irresponsible behaviour towards the public interest.

**Crofting community right to buy**

6.8 Crofting Community Body – Crofters should be able to do collectively and easily what they can already do individually. There is a concern by crofters that non-crofters in a community could frustrate their land management aspirations. However, an inclusive approach to community development is crucial. The Council welcomes the reduction of the minimum membership of the CCB to 20, but this still does not go far enough given the very small size of some crofting communities.

✓ Membership of a crofting community body should be open to all registered crofters, their families and all other individuals living within the township(s). However the relevant Grazings Committee(s) should take the initiative in setting up such a body. The minimum number of members should be set at 10 rather than 20 (90% of Grazings Committees are 10 persons or less – per Crofters Commission).

✓ The number of Directors should be determined by the CCB, whereupon the relevant Grazings Committee(s) should nominate the majority (who need not necessarily be registered crofters), with the remainder elected from the wider community.

6.9 Decision to proceed with purchase – The need to conduct a ballot in the crofting community area to secure a majority vote is an additional bureaucratic hurdle and could have to include households with little interest in the proposal.

✓ The decision to proceed with purchase should rest with the crofting community body. A vote should be carried out within the CCB and a majority of the members should indicate their support.

6.10 Valuation of crofting land – Following the same approach for land valuation as for the community right to buy provisions ignores existing crofting rights to acquire in-bye land at 15 times the annual rent. Existing valuations include any peculiar interest, depreciation of value, and disturbance to the remaining estate.

✓ Croft land for purchase should be valued at 15 times annual rent, revised to reflect current values with a modest increase for mineral and sporting rights. Due allowance must be made for any past improvements to the land as a result of investment by crofters and the wider community.

6.11 Salmon Fishings – The inclusion of salmon fishings within the definition of eligible croft land where they are within or contiguous to land proposed for purchase risks investment in well-managed fishings being held back because of insecurity of title. This position is worse than in the draft bill, when salmon fishings were defined within eligible additional land, and so a non-consenting owner(s) could appeal to the Land Court. No such appeal would now be possible.

✓ Salmon fishings should be removed from the provisions of Part Three of the bill, but with crofting community bodies, as well as communities, able to register an interest under Part Two of the bill. In addition, provisions should be made within the forthcoming
Local Government Bill for ill-managed salmon fishings to be compulsorily purchased by Local Authorities on behalf of communities where this would contribute to local wellbeing.

**A key additional aspect of land reform**

6.12 Tenant Farmers’ Right to Buy – No provision is presently included for tenant farmers to purchase land, although this was originally considered by Government in the early raft of possible land reform measures.

There should be provisions for a tenant farmers’ right to buy either within this bill or within forthcoming agricultural holdings legislation. This should preferably be along the lines of Part Three (tenant farmers’ right to buy at any time) or, if it is still considered that this would risk halting the letting of land, along the lines of Part Two (tenant farmers’ right to buy at sale/transfer). In this latter case, however, this should also be possible at transfers on inheritance. The valuation should be at open market value as determined if necessary by the Land Court. To ensure its continued use for agriculture, such land should be zoned for agricultural and ancillary use in Local Plans.

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Stirling Council Statement of Evidence to the Scottish Parliament Local Government Committee on The Land Reform Bill Part 1 Access Rights

1. Stirling Council is grateful for the invitation to present evidence to the Local Government Committee of the Scottish Parliament on the Land Reform Bill Part 1 Access Rights.

2. The Council believe that the introduction of this bill is timeous. It provides an opportunity to clarify the extent of the traditional freedom to roam that is believed to exist in Scotland and the chance to improve the legislation regarding rights of way and other paths. Both are issues that have been the subject of great debate for many years.

3. Consultation work carried out by the Scottish Executive prior to the introduction of this Bill was excellent despite the Foot-and-Mouth outbreak. The fact that 3,500 responses were received along with a 14,000 name petition testify to this.

4. The enactment of the Bill will have a number of consequences on local authorities. These include higher public expectation of good countryside access, better understanding of their rights and greater demand for local authority action. Key amongst which is the need to establish a network of core paths. Very few local authorities are in the position to do this at present. There will be a need to assess staff structures and financial arrangements to ensure that all the resources to undertake the work are in position. It is highly unlikely that present local authority budgets will be able to stretch to the extent indicated in the accompanying Financial statement of the Bill’s Explanatory Notes and the Council hope that the Parliament will take this on board when considering future local government funding.

5. From the local authority perspective the proposed legislation raises a number of issues which need to be addressed if their work to implement the act is not to be unnecessarily complicated. These are set out further on in this submission.

6. The Council’s response to the Draft Bill

6.1. Stirling Council was one of 30 local authorities to make a response to the publication of the draft Bill. It offered no comments on the Community Right to Buy or the Crofting Community Right to Buy.

6.2. Of those comments offered on Part 1 Access Rights 17 out of 35 have been taken on board to a greater or lesser extent.
7. **Have the Changes Improved the Bill?**

7.1. Yes. The changes that have been made turn the draft Bill from being unworkable to being workable. They also go part of the way to ensuring the Bill mirrors the recommendations of the National Access Forum. Unfortunately the changes do not deal with all the problems of the Draft Bill and further modifications are required to ensure that the Bill meets its full potential.

8. **What Still Needs to Change?**

8.1. In general the section dealing with responsible access is good and only requires the following clarification.

8.2. Clause 9(2)(a) This clause deals with conducting a business and could be construed to mean that Mountain Guides and indeed outdoor education in general is excluded from the right of access. Is this the case?

8.3. Clause 7(7)(a) The inclusion of hay and silage as a crop is good, but how will people recognise if a field is hay, silage or just rough grazing in the early stages of growth? If this remains then clear guidance is necessary.

8.4. Clause 6(b)(iv) the definition of curtilage still differs from that which has been developed through case law. It is suggested that this section be modified to point to the inclusion of a definition in the Interpretation section of the act and that identity the definition as used in the Town and Country Planning (Scotland) Act 1997.

8.5. Chapter 5 requires the most work. This is the section that deals with the powers, duties and requirements of local authorities following enactment of the Bill. It is the section that is the second lynch pin of the National Access Forums’ proposals for access legislation reform.

8.6. The Forum proposed a right of responsible access supported by the development of a network of paths and tracks.

“Paths and tracks. New measures are needed for securing new routes for walking, cycling, horse riding and for those with disabilities, and for creating new local path networks and strategic routes. Such provision should help to facilitate and manage the right of access in many parts of Scotland. The local plan process and the Paths for All Partnership should have a key role in this work.”

8.7. The Policy Memorandum follows this guidance in paragraph 42 (Local government)

“the provisions on access will give new powers ... in respect of ... the creation, maintenance and management of core path networks.”

8.8. This should be achieved in chapter 5 but isn’t.

8.9. The general duty (Clause 13), Prohibition Sign (Clause 14), Measures for Safety (Clause 15), Acquisition of land (Clause 16) and Local Access Forum (Clause 24) are good, the others require substantial change.

8.10. The concept of a Core Path Network is excellent and the methodology set out in Clause 17 and 18 for developing a Core Path Network Plan is fine (albeit it is extremely unlikely that a plan will be ready within 2 years). However,
beyond this there is no requirement to create, maintain or manage this network. In fact there is nothing to justify the inclusion of any path as a core path. A core path will be just the same as any other path on access land except that it will be recorded in a list and perhaps on a plan.

8.11. The ‘Path’ part of this chapter requires to be rewritten. It should give local authorities powers to carry out work on any path (achieved by clause 13, 14 and 15), a duty to prepare a Core Path Network Plan (achieved by Clause 17 and 18 with timescale changed to 5 years) and a duty to implement the plan and manage and maintain those routes (not achieved by present Bill).

8.12. This would effectively give local authorities discretionary powers on all paths and duties on Core Paths.

8.13. This could be easily achieved by an addition Clause 17 that requires a local authority to delineate the Core Paths on the ground or to implement the Core Path Plan. This would be then supported by a new clause (between 18 and 19) that states what the delineation includes. This would be the signposting and waymarking and the installation of appropriate boundary crossings (e.g. gates and stiles). Reference could be made back to Clauses 14 and 15 (modification of Clause 19) which makes it a duty to undertake some of those activities on core paths.

8.14. It should not be necessary to obtain the consent of the landowner to undertake some of these works, but it may be appropriate to notify the landowner of the proposed works.

8.15. The ploughing regulations detailed in clause 22 should apply to Core Paths as well as existing rights of way and paths created by path agreements and orders (not just path orders as at present). The requirements as set out require modification to bring them in line with the Rights of Way Act 1990 (England & Wales) which was specifically enacted to deal with the ploughing of paths. In essence this gives a farmer 14 days to reinstate the path line after the first disturbance (this allows adequate time for all associated operations without the need to restore it after each individual disturbance). After the 14 days period has expired the farmer has 24 hours to make good any disturbance. They can also apply before the end of the 14 day period to the local authority for an extension up to 28 days.

8.16. Clauses 20 and 21 deal with the delineation of paths by agreement or order. It is not clear from these sections whether all Core Paths should be covered by either a path agreement or a path order. As all core paths will have been through a detailed consultation process under Clause 17 and 18 why is it necessary to have a path agreement of path order on them?

8.17. As written these only apply to land where the public has a right of access and as such the reference to payment is unacceptable. As the public have a right of access why should somebody be paid for agreeing to a path?

8.18. Where these mechanisms are important is for the creation of routes across none access land. At present the Bill does not cover this. Instead the provisions of the Countryside (Scotland) 1967 Act are retained. As the Land Reform Bill requires the preparation of a core path plan, which might include routes across land where the new access rights do not apply, then it would be sensible if the Land Reform Bill contained all the provisions to form paths across land with and without the new access rights.

8.19. Clause 24 details the establishment of access fora for each local authority area. One thing it does not do is set a maximum limit on the size of any one forum.
Recent work by the Countryside Agency (Research note CRN 23 – Local Access Forums: Role, Responsibility and Operation) states that membership should be limited to a maximum of 20. Whilst the new National Parks (Scotland) Act recommends a forum size of 25.

8.20. We believe that if the modifications detailed above are made then Part 1 of the Land Reform Bill will truly meet its objective of improving access to the countryside for residents and visitors to Scotland.

17 January 2002

Prepared by Richard Barron Access Officer & Donald Balsillie Countryside Manager.
LAND REFORM (SCOTLAND) BILL

Written Submission by West Dunbartonshire Council to the Local Government Committee of the Scottish Parliament regarding Part 1 (Access) of the Bill.

As presented by Councillor Iain Robertson Convener of Economic, Planning and Environmental Services and David Hill, Section Head, Forward Planning and Regeneration.

1. INTRODUCTION
1.1 West Dunbartonshire Council welcomes this opportunity to provide a written submission on the Land Reform (Scotland) Bill and to appear as a witness before the Local Government Committee at its meeting on 22 January 2002.

1.2 West Dunbartonshire Council and its predecessor authorities have a long history of involvement with access issues, particularly the promotion, maintenance and management of access throughout the Council area. Our involvement in the establishment of initiatives such as the Loch Lomond Park Authority, the Kilpatricks Project, the Leven Valley Initiative and the Greenspace for Communities Initiative have given us considerable experience of access issues and of the development of improved access throughout the area. Promotion of access is a key component of the approved development plans for the area and through the Council’s development control process we have also been actively involved in negotiating public access as part of development proposals.

2. BACKGROUND
2.1 West Dunbartonshire Council is a relatively small authority with limited resources in terms of staff and funding. However, located as it is on the edge of the Glasgow conurbation, in close proximity to the Kilpatrick Hills Regional Scenic Area and included within part of the proposed Loch Lomond and Trossachs National Park, public access is an important issue for the Council. With the advent of the new Act access will undoubtedly become more important as the legislation and the Access Code raise the whole profile of access in the minds of our residents, landowners/managers and visitors to the area.

2.2 More recently, and in the context of the forthcoming legislation, we have developed a Countryside Access Strategy in association with the Paths for All Partnership for the Council area. This has been produced in draft form and has also been the subject of a recent consultation exercise which is currently being analysed. This strategy recognises the importance of the development of a core paths network.

2.3 In order to prepare for the new legislation and to implement the Access Strategy we have successfully applied to Scottish Natural Heritage for...
funding to appoint an Access Officer. Hopefully this position will be filled within the next six weeks.

2.4 The Foot and Mouth crisis which hit the country last year had a major impact on the agriculture and tourism industries in particular, but, it also demonstrated several valuable lessons. It reinforced the importance of tourism in the Scottish economy and the contribution of access to this. Our own experience suggests that it also demonstrated a willingness by landowners, land managers and the general public to take a responsible attitude to access. Relationships have been established as a result of that crisis which will greatly assist the implementation of the forthcoming access legislation.

3. DRAFT LAND REFORM BILL (FEB 01)

3.1 As a Council we responded to the draft Land Reform (Scotland) Bill published in February 2001 stressing our support for the right of responsible access, the economic importance of access and the key role that local authorities would have to play. We expressed concern about issues like the criminalisation of access, the definition of crops and, most importantly, the resource implications of the Bill.

3.2 We are pleased to see that many of the issues that we raised have been taken into account in the Bill as introduced.

4. LAND REFORM BILL (AS INTRODUCED) – SOME ISSUES AND IMPLICATIONS

4.1 Moving on to the Land Reform (Scotland) Bill, as introduced, we feel that the principles contained in the Bill are to be welcomed and will not only clarify the position regarding access in Scotland but facilitate improvement of access in a responsible and managed way. We welcome the creation of access rights which will give everyone the right to be on land for recreational purposes and give them the right to cross land. Equally importantly we welcome the fact that these rights have to be recognised responsibly. The promotion of the Access Code will be a key element in informing all concerned on responsible attitudes to access. Appropriate resources must be identified nationally to ensure not only the promotion of the code but also the provision of appropriate training and education in its use and application.

4.2 The Bill, as introduced, reinforces and increases the central role local authorities will have to play. In particular it places a duty on the authority to assert, protect and keep open and free from obstruction or encroachment any route or other means by which access rights may reasonably be exercised. It also places a duty on the local authority to produce a core paths plan for its area within two years of the legislation coming into force. It places a duty on the local authority to establish at least one local access forum. Taking these and other responsibilities into account (such as powers to make byelaws, powers to exempt land from access or exclude particular behaviour, negotiation of management agreements, removal of obstruction,
provision of public information and education) will put extra pressure on authorities, particularly small authorities, at a time when resources are restricted. Up to the present time the Council has only been able to devote limited resources to access. The appointment of an Access Officer will be a major contribution to the effective implementation of the new legislation. However, we are concerned that, particularly with the two year time limit on the production of the core paths plan, the pressures will be such that effective delivery will be difficult unless additional resources can be identified and ringfenced.

4.3 Reference has already been made to the Council’s draft Access Strategy. Appendix 1 (Action Themes) lists the principles established for the strategy as a result of audit and consultation. Those agencies in West Dunbartonshire with an interest in access take a holistic view of its importance. West Dunbartonshire is an area of significant social exclusion. 30% of its residents live in recognised Social Inclusion Partnership areas. Issues such as health and community economic development can link to and benefit from access improvements. Consultation has demonstrated that there is a demand for and recognition of the importance of access in the area by its residents. Consultations have also demonstrated that the majority of those with an interest in access seek benefits from clarification of rights of access in Scotland and from the proper management and promotion of access. Quality of access has also emerged as an issue with many of those consulted pointing out that efforts need to be concentrated on the existing network and addressing matters like path condition and user security as priorities.

4.4 The Council has some 38 rights of way covering 70 kilometres within its area. West Dunbartonshire has a population density of 2500 people per kilometre of path compared to the Scottish average of 335. This demonstrates the predominantly urban character of the Council area, and the potential level of demand. The Council also has an extended urban/rural fringe boundary with many communities, including many disadvantaged communities, directly “backing onto” countryside. Taking account of the figures referred to above and the fact that national surveys suggest that 50% of all walks start from home, levels of demand for good quality access within West Dunbartonshire can be seen to be particularly high. These already high levels of demand will have to be managed by West Dunbartonshire Council in the context of the increased priority given to access by the new legislation and the code.

4.5 The Access Strategy has also made a “first stab” at costing access improvements on the basis of a draft core paths network identified for the Council area. Taking into account the improvement of the existing path network plus a 10% extension of that network, then overall costs are in the region of £500,000 capital plus £70,000 annual maintenance costs. These are rough estimates at the present time but they indicate the possible minimum costs involved in delivering a properly managed and maintained core paths network.

4.6 The new legislation places a requirement on local authorities to prepare core paths plans and to consult on these. It requires that these plans be properly
advertised and be available for use. The legislation does not specifically require local authorities to create and manage/maintain the core paths network identified. However, **in real terms such a network will have to be managed and maintained because it will be identified in a public document backed up by statute and there will be a popular expectation that these networks should meet some reasonable minimum standards.** This will be particularly the case if account is taken of the range of potential users of such paths. The needs of disabled people, socially excluded groups and the demands which will come from increased awareness of walking as a leisure pastime will create pressure. Visitor numbers generated by the Loch Lomond and Trossachs National Park, the Glasgow to Loch Lomond Cycle Route and the Forth and Clyde Canal will add to this. People will expect core paths to be managed and maintained, to be as safe and accessible as possible to all.

4.7 Resource constraints will be particularly important with respect to the **timescale for core paths plan preparation.** The two year deadline for plan preparation is relatively short given the other aspects of the legislation which will require to be implemented in parallel, e.g. establishment of Access Forum. Because of the relatively short timescale it is likely that a significant number of core paths plans will only be completed at the end of the two year period. Given the requirement in the legislation for local inquiries, if objections to the plan are not withdrawn, this could mean that there is considerable pressure on resources within local authorities and within the Scottish Executive concentrated soon after the expiry of the two year time period. A series of inquiries taking place nationally at the same time and possibly concentrating on the confrontational aspects of access could easily create a very negative public perception of the relatively new legislation. **Extending the time period to, say 3 or 4 years, could allow for the phased publication of core paths plans.** Advantages could include the following –

- less of a “log jam” in core path plan development,
- could allow issues considered at early inquiries to inform the preparation of other core paths plans,
- allow time for development of “best practice”
- put less resource pressure on the inquiry process,
- provide a longer period to negotiate away objections,
- provide a longer settling-in period for new access forums,
- production of more robust and sustainable core paths plans.

4.8 Perhaps some consideration should be given at Section 18 (4) of the Bill to the **need to qualify the nature of objections to the core paths plan** to include a requirement that these must be material objections within the context of the legislation. As it stands at present Ministers must cause a local inquiry to be held if an objection remains unwithdrawn, without any qualification as to the relevance of the objection.

4.9 Section 11 of the Bill details **the powers of local authorities to exempt land or exclude conduct for access rights** but does not provide any guidance on the circumstances where such rights should be exercised. Unless some
national guidelines are established then there could be considerable confusion on this matter with individual local authorities applying a variety of interpretations of their powers under the section. There will no doubt be conflicting demands on local authorities on how best to apply this new power. Differences in application could cause confusion at national level.

4.10 The new Access Legislation will put increased responsibilities on many agencies and individuals but **a very particular responsibility will be placed on local authorities.** As matters stand at the present time, West Dunbartonshire Council has been able to identify resources to match fund an Access Officer post which will be critical to the success of implementing the Access Strategy. However, as stated above there will be increased pressures on staff for access management, access information and for improvement of the physical infrastructure of major access routes in the Council area. It is difficult to see where such resources will come from. This is a matter which requires to be addressed nationally and local authorities require the resources to do the job.

4.11 The new **National Park for Loch Lomond and the Trossachs** will have a key role to play in visitor management in the area. The role of the national parks needs to be specifically recognised within the Bill. There has been an assumption that the National Park Authority will have an access management role similar to that of local authorities. If so, then this position needs to be specifically clarified in the legislation.

4.12 West Dunbartonshire Council are concerned about the **implications of the exclusion of business activity** in certain circumstances from access rights. Businesses such as trekking and walking companies which tend to be small scale 1 or 2 person operations could be severely disadvantaged by this. Perhaps such businesses could be identified by some form of national licensing or certification scheme which would recognise their “excepted business” status for the purposes of the Act.

5.0 **CONCLUSION**

5.1 The **Land Reform (Scotland) Bill** presents a significant opportunity to clarify the position regarding access in Scotland and is to be welcomed for this.

5.2 **Local Authorities are identified in the Bill as the key agencies in ensuring its success and will require to take on board a number of new duties and powers.** They will have a central role in access management, education, arbitration and implementation. West Dunbartonshire Council has taken some early steps to prepare for these new responsibilities and is very aware of the resource implications contained within these.

5.3 While the Bill does not place a duty on local authorities to physically manage, improve and maintain core paths plan networks, in reality,
authorities will be faced with public pressure to do so and will have to respond positively to this.

5.4 Partnership working will be key to the success of the new legislation. Agencies will have to work together to maximise the impact of their resources. West Dunbartonshire Council is prepared to play its part. This is a part which can only be properly realised if it can access the funds to do the job.
APPENDIX 1

ACTION THEMES (As extracted from West Dunbartonshire Council Access Strategy).

The strategy is guided by principles founded by the synthesis of audit work and consultation. Section 4 describes these principles.

- **Making the most of existing routes:** how cost effective solutions can be developed, including land manager involvement/participation in maintenance, and targeted maintenance where conflicts may be occurring.
- **Creating networks and links:** the need to build on existing routes. Small but focused improvements can help to achieve a more coherent network.
- **Promoting healthy lifestyles:** concentrations of poor health in areas of social exclusion, and potential initiatives to raise awareness of the health benefits of walking, cycling and horse riding. Community health can also benefit from efforts to include the socially excluded.
- **Community participation and involvement:** the need to consider how commitments to community participation can be implemented. A ‘stepped’ approach provides insights into how community interest can be developed to be maintained in the long term and to become more inclusive.
- **Land manager liaison:** ways of ensuring that land managers are included in decision making processes. Recommendations include careful organisation and structuring of meetings, and building community-land manager relationships.
- **Responsible use:** the need to ensure that any increase in access is responsible. The new legislation emphasises the importance of recognising that communities, users, agencies and land managers each have a responsibility for delivering on access.
- **Personal safety and security:** the importance of overcoming perceived and actual problems with personal security on routes and within access areas.
- **Access for all:** ensuring that the path network meets the needs of different kinds of users of all ages and abilities.
- **Promotion and marketing:** promoting the use of the path network through improved signage, maps, leaflets, local events, and ongoing personal contact with potential users.
- **Maximising the benefits of long distance routes:** building in particular on the Glasgow to Loch Lomond cycle route, to establish better local links with long distance routes, in turn encouraging visitors to stop off in the area. Connecting this route with planned links further afield.
- **Access and economic development:** building on opportunities arising from the Lomond Shores and Bowling Basin developments, linking into regeneration plans, and making more of opportunities for employment and income from tourism.
LAND REFORM SCOTLAND BILL

THE HIGHLAND COUNCIL'S SUBMISSION TO THE LOCAL GOVERNMENT COMMITTEE

1. The Highland Council is responsible for local government in 35% of Scotland. It includes:

   a) The longest length of coastline
   b) The highest number of nationally important mountain areas including Munroes
   c) The largest number of freshwater lochs and rivers
   d) The greatest number, and most extensive area of land subject to statutory scenic and nature conservation designations
   e) The longest length of officially designated long distance walking routes.

Many of these features such as Ben Nevis, Loch Ness, and the Cuillins are of national and international importance. The area is also host to 43 widely dispersed settlements with a population in excess of 500 ranging from Broadford on the island of Skye with 530 to Inverness on the Moray Firth with just over 44,000. Each of these centres of population has a hinterland of mixed countryside where this is an interaction between recreational and other land uses. They are often next to areas with intrinsically poor path provision and no ready access to sports centres, country parks or other more formal recreational facilities.

Tourism is the largest source of income and employment within the area and good countryside access is a vital component to that industry. Four years ago the value of mountaineering activity above the 2500 foot level in the slightly wider Highlands and Islands Enterprise area was estimated to be £300 million.

2. The main reasons for changing the present law governing access to land are;

   a) To remove uncertainty and instill confidence among members of the public..
   b) To provide a secure foundation for investment in the access "industry".
   c) To provide a climate for social inclusion and development of Community generated path schemes, G.P. referrals and alternative health initiatives such as "Paths for Health"
   d) To build understanding and empathy between town and country dwellers.

3. The Highland Council believes that if the new legislation is to be effective it must meet the following criteria:
a) It should be simple and easily understood by members of the public and easily administered by the local authority.

b) It should be accompanied by sufficient investment to fulfil its objectives equably throughout Scotland.
   (To date the funding model used by the Scottish executive has been population rather than area based.)

4. The Council has led and been associated with investment in footpaths and access initiatives to the value of approximately £10 million over the last 10 years. It currently retains the services of 20 Countryside Rangers, 1 Access Officer and 6 Project Officers associated with access initiatives. Despite the relatively high number of Rangers we do not have full coverage yet and only 25% of their time is devoted to access issues. One individual is currently covering Skye and Lochalsh, an area of 1055 square miles compared to Greater Glasgow City Council's 175 square miles.

5. This investment represents a start to addressing the improvement of and development of access for mainly pedestrians throughout a very large and diverse area but significant additional expenditure will be required to include:
   a) Provision of facilities for off road cyclists, horse riders, and water sports enthusiasts.
   b) Development and maintenance of core path networks around each of the 43 significant settlements.
   c) Funding and Management of up to 8 Access Forums.
   d) Expansion of the Ranger Service and employment of more Access Officers.

6. Section 9 Conduct excluded from Access rights

The Council is very concerned that this addition to the Bill will seriously affect commercial organizations such as mountain guides, outdoor centres, and walking canoeing, pony trekking and off road cycle operators. Commercial operators of this nature are based in all of the principal mountain areas in the Highlands and provide significant employment and income generation. Schools, Duke of Edinburgh Award participants and walking and mountaineering clubs also use this expert advice particularly in the area of skills and safety instruction for winter sports and mountaineering. Success in encouraging participants to acquire better safety skills can be measured by the continuing proportional reduction in accidents relative to the numbers actually taking part in outdoor pursuits.

It will also be essential for delivery of the Access code that such organizations are available and not impeded in their ability to instruct.

The largest landowner in Scotland, the Forestry Commission, has no problem with commercial groups taking access to their land, neither does the National Trust or the R.S.P.B. who have a keen interest in conservation. They are more concerned as are the Council's Ranger Service in locations like Glen Nevis with the staging of large scale charity events which should be covered by the Access Code.
7. **Section 11. Power to Exempt Particular Land and Exclude Particular Conduct from Access Rights.**

The Council requests that power to exempt land or certain categories of use be subject to local democratic control and vested exclusively in the local authority. There may be circumstances where there is a case for extending privacy beyond the immediate curtilage of a building to retain its attraction and income and employment generating potential to an exclusive clientele.

8. **Local Access Forums**

Their most valuable role will be to reconcile and agree standards of behaviour between competing recreational user groups. The ability to resolve serious points of difference between land occupiers and other parties is likely to be beyond the ability of lay people and has to be attended to promptly rather than by a Committee meeting at set intervals. This is better handled by local authority professionals. There is also a problem in expecting a forum in east Sutherland to pronounce upon a matter in the north west area of the county. It could be comparable to requesting a group of Edinburgh residents to make a decision which would affect Glasgow! Again there will be a cost implication in servicing any forum as well as a practical problem of reducing numbers to a workable committee size. A rough estimate of interested parties in the Lochaber area comes to 25 when one includes representation from all of the stalking, angling, farming, crofting, and forestry interests and all of the recreational activities on land and water.
1.0 SUMMARY

1.1 The provisions of the Land Reform Bill on their own will not achieve increased public access to the countryside. The importance of the new access provisions in the Bill lie largely, if not wholly, in their underpinning of a pro-active, coordinated, process of planning for, delivering, and managing increased access. It is therefore vital that the Bill includes provisions, which support this process by placing a parallel duty on all public bodies to support access in its widest sense and to support Local Authorities in carrying out their new duties under the Act.

1.2 The Bill as it stands makes a major contribution to changing the context in which outdoor access operates in Scotland. Indeed, the new duties on local authorities laid out in the Bill, and the proactive access climate which the preparation of the Bill has created in Scotland, has been the impetus to the establishment of the Argyll and Bute Core Path Network Project. It is through this partnership project that Argyll and Bute Council has found an innovative way to tackle the problems of achieving well planned and managed access, in line with the aims of the Bill. It is also through the experience of establishing a core path network ahead of the legislation that the following evidence is drawn.

2.0 LESSONS FROM THE ARGYLL AND BUTE CORE PATH NETWORK PROJECT

2.1 Argyll and Bute Council, seeking to take advantage of the opportunities access can offer to the residents of, and visitors to, Argyll and Bute, has grasped the leadership role outlined for Local Authorities in the Draft Legislation. The Council has initiated a partnership project to plan for, implement and manage a Core Path Network covering the entire local authority area. The aim of the Project is the delivery of a comprehensive, evenly distributed, and well maintained, network of access facilities throughout Argyll and Bute, which reflect the priorities of the communities they serve.

2.2 The Partnership includes 17 bodies (see appendix) and is vital for the success of the project. The key challenge in this area is that of keeping the members of the Partnership coordinating their efforts and focusing on agreed priorities over a sustained period when each member has their own agendas to pursue and are held to account in different ways.
2.3 The **Process** involves a series of 15 public consultations across Argyll and Bute, where local communities identify their priorities for access, these priorities are mapped, agreed with landowners, costed and included in the Core Path Plan for the area.

2.4 The **Implementation and Management** will require:

- The underpinning of the new access right to create a positive context for access and bring the landowning community to the table because it will be in their interest to agree path alignments through the planning process.
- **Government Departments** to reinforce and support access in general, and the planned approach to access specifically, by resourcing Local Authorities properly to undertake their new duties, and by greater coordination and integration of actions and budgets across Government Departments.
  - Examples: Agriculture grant assistance should be encouraging farmers to integrate access proposals, in line with the Core Path Plan, on their land as part of “whole farm management”. The Public Transport Challenge Funds should encourage integration of public transport bids with the Core Path Plan. All Government Challenge funds should be awarded on the basis of reinforcing strategic planning processes including the Core Path Plan.
- **All Public Bodies** with landowning or land managing roles to support access in general, and the Core Path Plan in particular, on their own land.
- **All Public Bodies** to support the implementation of the priorities in the Core Path Plan in their Policies, Programmes, Actions and Grant giving.

The Bill presently sets out duties for local authorities, but not for other public bodies. This varies from the original advice to government from Scottish Natural Heritage and the National Access Forum, which envisaged the setting of clear duties for other public bodies. There is the very real danger that placing a duty on local authorities alone will allow other bodies to legitimately avoid becoming involved in an area which vitally requires their input, leaving local authorities struggling to deliver their new duties.

2.5 **KEY POINTS** The Land Reform Bill can best support Argyll and Bute Council, and all other local authorities, in achieving vastly improved outdoor access opportunities;

1) By creating a complementary duty on all public bodies;
   - to recognise, accommodate and protect the new right in their policies, plans and actions, and
   - to support the Core Path Plan in their policies, plans, actions, budgets and grant giving.

2) By stating explicitly the intention of Government to properly resource Local Authorities to deal with the essential extra duties created by the Bill.

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Appendix:

Argyll & Bute Core Path Network Project

Background:

For some time Argyll and Bute has been looking at how best to promote outdoor access and all its consequential benefits to health, well being, and the economy. The development of the Land Reform Bill and the discussions surrounding it, provided a vital focus to the Council’s investigations, and created an added impetus to addressing how best to provide for access in Argyll and Bute.

Previously access has been promoted in our area on an ad hoc, project by project basis. The area, and the Council in particular, has lacked the resources to put in place the regimes necessary for the management of access and countryside opportunities. Therefore, despite having a rich natural heritage and an environment perfectly suited to outdoor leisure pursuits, there remains a limited and uneven distribution of facilities for countryside access.

During the process of developing the ‘Highlands and Islands Access Strategy’ this same situation was identified to varying degrees elsewhere in the Highlands and Islands. This Strategy was undertaken by Strategic Consultant, Andrew Thin, promoted by Highlands and Islands Enterprise in partnership with the six local authorities in the area, Scottish Natural Heritage, Paths for All Partnership, Forestry Commission Scotland, National Trust for Scotland and the Highlands and Islands Tourist Board.

It found that while considerable public money had been spent on access in the Highlands and Islands, this had occurred on a fairly ad hoc basis and with very little analysis of costs and benefits. The Strategy achieved;

- a consensus on the value of access to the Highlands and Islands,
- agreement on the priorities for access development in the area,
- a methodology for taking that process to the local authority level.

Argyll and Bute Council wholeheartedly grasped the opportunity offered by this consensus between the public agencies and immediately moved to create a mirror image partnership of the relevant public agencies (plus a number of additions such as the Health Board) at the local authority level. This Partnership agreed to take forward a strategic process of comprehensively planning for access across Argyll and Bute through the ‘Argyll and Bute Core Path Network Project’.

The Argyll & Bute Core Path Network Project (CPNP)

This CPNP Project seeks, through 15 area initiatives, to identify access needs throughout the Council area and to set out a strategic core path network. This will be a range of welcoming, accessible, well-maintained and appropriate outdoor access routes based on resident and visitor need. The Project started in May 2001 and is a partnership between several agencies and departments within the Council and has European funding. There are also a number of non-funding partners.

As the CPNP is not being aimed at just those who walk, cycle or ride already but, more importantly, at groups who do not traditionally see themselves as path users, the role of the Community Planning system is essential if the full potential of the project is to be reached. There will be opportunities to highlight paths within settlements that could be developed to encourage children walking to school (Safe Routes to Schools), routes to shops, GP referral schemes etc. The wider network should help develop economic benefit from tourism while still benefiting the
local population. The health aspect is very important to the CPNP and links are being made with the Health Trust to maximise the potential.

The CPNP crosses many boundaries both for delivery and usage. It engages different organisations and Council service providers and ties in with many of their aims and objectives. The challenge will be in the co-ordination of budgets, maximising the value for money and creating an exciting and diverse path network that will benefit a wide cross-section of the community (resident and tourist).

**Partners**

Argyll and Bute Council (Economic Development, Statutory Planning, Transportation, Social Work, Corporate Policy, Public Protection)  
Environment Task Force  
Highlands & Islands Enterprise; Argyll & the Islands Enterprise; Scottish Enterprise Dunbarton  
Scottish Natural Heritage  
Paths for All Partnership  
Forestry Commission Scotland, Forest Enterprise  
AILST Tourist Board  
Lomond and Argyll Primary Care NHS Trust  
The Loch Lomond and the Trossachs Interim Committee  
Lower Clyde Project  
Local Biodiversity Partnership  
Historic Scotland; National Trust for Scotland; Scottish Wildlife Trust;

This grouping will influence, in the future, the development of the Area Access Forum. Other landowning, specialist group, individuals etc. will also be incorporated into the process. Resource constraints (Financial and Staffing) have been a deciding factor on the development to date.

**Funding**

Having the Highlands and Islands Access Strategy agreed and in place made the project very attractive to the Highlands and Islands European Special Programme and a £390,000 funding package was secured (only for EAGGF area).

Islay has been working over a number of years to secure an access project. They had financial assistance through NADIR and other partners to establish a parallel project, which has now reached implementation.

**Argyll & The Islands Area**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Argyll and Bute Council</td>
<td>£32,186</td>
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<tr>
<td>Highlands and Islands Enterprise</td>
<td>£30,000</td>
</tr>
<tr>
<td>Argyll and the Islands Enterprise</td>
<td>£15,000</td>
</tr>
<tr>
<td>Scottish Natural Heritage</td>
<td>£82,516</td>
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<tr>
<td>Paths for All Partnership</td>
<td>£25,000</td>
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<tr>
<td>Forest Enterprise</td>
<td>£1,500</td>
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<tr>
<td>Europe (EAGGF)</td>
<td>£154,708</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£340,910</strong></td>
</tr>
</tbody>
</table>

This overall funding facilitates:  
- a Project Manager  
- 15 community consultations to create Core Path network plans for the entire area  
- initial demonstration works to start implementing these priorities.
A separate funding package of approximately £50,000 pounds has been secured for the Helensburgh & Lomond area which lies outwith the previous funding area.

**Helensburgh & Lomond Area**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argyll &amp; Bute Council (Lower Clyde Project)</td>
<td>£ 10000.00</td>
</tr>
<tr>
<td>Scottish Natural Heritage</td>
<td>£ 20000.00</td>
</tr>
<tr>
<td>Paths For All Partnership</td>
<td>£ 5000.00</td>
</tr>
<tr>
<td>Scottish Enterprise Dumbartonshire</td>
<td>£ 10000.00</td>
</tr>
<tr>
<td>Shortfall</td>
<td>£ 5000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£ 50,000</strong></td>
</tr>
</tbody>
</table>

Funding for the implementation phase (all areas) of the process has yet to be secured.

**Process**

1. **Needs Analysis**

   Within each of the project areas, there will be a number of community participatory initiatives. A consultant will run participatory workshops, which will initially attempt to draw from communities where they are currently, using routes (cycling, walking, horse-riding) and the types of paths which are needed in their area. The consultant will then move on to draw from the community suggestions of paths in their area to meet those needs identified. It is anticipated that the participatory initiatives will vary from 3 to 5 in each project area.

2. **Management Action Plan Development**

   Having completed the needs analysis for each area, the consultant will proceed to undertake a survey of the top priority paths in the area. They will make an assessment of their potential role in the Core Path Network and their condition, proceeding to detail and cost works required for their management.

3. **Management Action Plan**

   The Core Path Network Identification element, as detailed above and described further in the Strategic Framework, will enable the Council, SNH, LEC’s and others to discuss/determine the finances to be made available over time for access facilities. This will inform what routes are to be included in the Management Action Plan and hence what routes will be ultimately maintained and developed.

**Current Development**

Currently 5 out of a programmed 15 Core Path Network Consultations are underway/completed in Argyll and Bute and significant lessons are already being learnt. Different approaches to the development of the Management Action Plan are being taken.

**Consultant approach:** Cowal; Helensburgh & Rosneath; and South Kintyre

Consultants will facilitate the community response

**Community / Consultant approach:** Islay

Consultants co-ordinated the work with the community. Community agents were employed to assist the consultants in each settlement.
Community approach: Mull
The Mull & Iona Community Trust have been approached to facilitate the community workshops themselves.

Demonstration Projects:

- ‘Countryside Access for Disabled People in Argyll & Bute’

  The focus of the brief is the development of processes and procedures that will ensure the integration of accessibility issues into the planning and establishment of local countryside path networks. This work will be undertaken through practical activities in selected areas which take forward the development of accessible networks whilst at the same time providing a model which can guide work in other localities both in Argyll & Bute, and across Scotland.

- ‘Paths to Health’

  We are currently discussing with the Lomond & Argyll Primary Care NHS Trust how to develop health orientated path projects around Argyll. These will be linked to the new scheme managed by Paths for All called ‘Paths to Health’.

The Future

The consultation process will be completed for the remaining areas in Argyll & Bute by early 2003.

The results of the first five consultations will be analysed and the funding implications used to influence and project future funding applications for the overall Core Path Network for Argyll & Bute.