RURAL DEVELOPMENT COMMITTEE

AGENDA

3rd Meeting, 2002 (Session 1)

Monday 21 January 2002

The Committee will meet at 2.00 pm in Kilmaronock Millennium Hall, Gartocharn

1. Land Reform (Scotland) Bill: The Committee will take evidence at stage 1 from the following witnesses—

   John Kinnaird, National Farmers Union of Scotland
   
   Dave Morris, Ramblers Association
   
   Fran Pothecary, Scottish Outdoor Recreation Network
   
   Willie Macleod, VisitScotland.

2. Subordinate Legislation: The Committee will consider the following instruments under the negative procedure—

   The Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No.3) Amendment (No.2) Regulations 2001 (SSI 2001/483)
   
   The BSE Monitoring (Scotland) Amendment Regulations 2002 (SSI 2002/1).

Tracey Hawe
Acting Clerk to the Committee
The following papers are attached or are relevant to this meeting:

**Agenda item 1: Land Reform (Scotland) Bill**

Written submissions on access rights (Part 1 of the Bill) received from the following, from whom oral evidence will be taken at this meeting, are attached—

- National Farmers Union for Scotland
- Ramblers Association
- Scottish Outdoor Recreation Network
- VisitScotland


A private briefing paper prepared by the Scottish Parliament Information Centre is attached (for Committee Members only).

Members are reminded to bring with them a copy of the Land Reform (Scotland) Bill (SP Bill 44) and Policy Memorandum and Explanatory Notes

**Agenda item 2: Subordinate Legislation**

The Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No.3) Amendment (No.2) Regulations 2001 (SSI 2001/483) is attached

The BSE Monitoring (Scotland) Amendment Regulations 2002 (SSI 2002/1) is attached.
NFU Scotland welcomes the opportunity to comment on the Land Reform (Scotland) Bill, as introduced to the Parliament on 27 November 2001. As requested this Memorandum focuses mainly on the changes made by the Executive following consultation on the draft Bill and the extent to which these address concerns raised during that consultation. The main concerns of NFUS relate to Part I- Access Rights and are identified according to the relevant sections of the Bill.

Part 1- Access Rights

The creation of a right of access to land for recreation and passage seeks to import a degree of legal certainty in a vague area of the law. NFUS maintains that the Bill still fails to strike the balance between the desire of recreational users to enjoy the countryside and the needs of those who live and work in the countryside.

Section 1
This section should expressly provide that the right to access will be exercisable during hours of daylight only. There will then be no doubt. A discretionary power at the hands of a local authority to exempt particular areas of land from the exercise of access rights during “hours of darkness” will not give legal certainty in relation to such a sensitive issue.

Section 2
This section is too vague to achieve legal certainty. Having “regard” to the access code-which does not have substantive status in law- is insufficient. The Bill must provide for management of access if appropriate balance of interests is to be achieved.

Section 3
The right of access would appear to override the right, title and interests of an owner or occupier in the way he manages his land.

Section 4
The power of Ministers to prescribe land-use and management practices could upset the balance of interests if access is not managed too. The sanctions against irresponsible access in the draft bill have been removed, yet controls can still be applied to land management.

Section 5 (2)
The crucial issue of liability remains unclear and NFUS concerns are still largely unanswered. The more precise wording given by NFUS/SLF should be considered as a means of identifying the limit of legal liability and making it clear that people exercising the right of access do so at their own risk. There is still no indication to legal liability in respect of damage to conservation interests, sensitive environmental subjects or impact on farm quality assurance. A vague reference to SNH activities in section 26 is inadequate.
If people are given the right to enjoy someone else’s property, should they also have a duty to carry insurance to cover any damage to that property in the exercise of that right?

Section 7
Sub-section (7)(b) is welcome so far as it goes. Grass which is being grown for hay and silage can be grazed in the first year. How is this to be communicated to the access-taking public? Sub-section (7)(c) could present difficulties for farmers who are encouraged, and sometimes contractually obliged, to use these field margins for conservation or environmental purposes.

Section 9
Sub-section (2)(a) is welcome: commercial interests should not have the right to use someone else’s property for gain. Sub-section (2)(g) is inadequate. The issue of access with dogs is a major concern for NFUS members. The Access Code has good advice, but the Bill should expressly exclude dogs from fields with livestock or crops grown for human consumption rather than referred to in the Access Code. Again, even if a horse were “under proper control”, access on horse back through a field with livestock present could be dangerous. This section could usefully address problems associated with different or possibly competing means of access, eg horse riding and walking and cycling.

Section 11
It is appropriate for local authorities to except both land and conduct from access rights, but the associated procedure is cumbersome and potentially lengthy. Land managers must be able to act quickly to suspend access temporarily in the interests of public health and safety when they consider it is necessary.

Section 12 (2)(c)
Byelaws regulating the use of vehicles, sport and recreation, or conduct of any trade or business “to protect and farther the interests” of people taking access would severely impinge on land management interests and capabilities. Provision is made for consultation but ultimately the decision rests with the local authority.

Section 14 (1)
How does a farmer prove that putting animals in a field, growing “vegetation” or carrying out “any agricultural or other operation on the land”, is not for the main purpose of preventing or deterring access? A cumbersome appeal process is provided for, yet the farmer could end up in the Sheriff Court and incur expense thereby.

Section 15 (2)
It is appropriate that local authorities take steps to protect the public from danger, but there are anomalies in this sub-section in relation to other statutory provisions. For example, in terms of the Animals (Scotland) Act 1987, the keeper of certain species of animals is faced with strict liability for injury or damage caused by an animal belonging to a group which manifests a particular risk. Farm animals are included.
A farmer therefore wishes to restrain animals by locking gates or erecting barbed wire or electric fences. Yet, in terms of section 15 (2) a local authority may consider that this action could injure a person exercising access rights and require removal. How does the farmer stand vis-à-vis his responsibility to the public? These provisions have to be reconciled.

Section 17
The duty on local authorities to draw up and adopt a plan for a core path system is an improvement on the draft Bill. However, this falls for short of the duty as recommended by the Access forum to establish and maintain core paths. As presented, the Bill does not reflect the positive policy intention expressed in the Policy Memorandum (Para. 20 P.5) as to the requirement to establish core paths.

Section 23
The provision for Rangers no longer includes the function to “secure compliance” with provisions for access rights. Sub-section (2) identifies purposes for appointment of Rangers as advising and assisting the public in exercising the right. More specific provision as to identifying rights of land managers is required.

Schedule 2.1
The amendment to section 3 of the Trespass (Scotland) Act 1865 would allow wild camping and lighting of fires.

The revised Scottish Outdoor Access Code has yet to be considered to determine its relationship with the Bill. The Policy Memorandum assertion (Para 6 P. 2) as to balancing interests has not been achieved. The Code might help to achieve some management of access. More of the code provisions should be in the Bill to ensure balance of interests.

Part 2- The community right to buy

Section 35
NFUS remains concerned that the criteria for registration of community interests in land are not sufficiently precise. References to a “substantial connection” with the land or “sufficiently near” to the land will not necessarily relate to those people who actually live and work on the land in question. One tenth of the members of the community giving an indication of approval for registration is a very loose approach in determining a sufficient level of support.

Section 55
Farmers are still concerned that a community group could identify part of a farm on the edge of a settlement for a specific purpose. This could have implications for the value of that farm and future investments in that farm.
Part 3- The crofting community right to buy

Section 72
NFUS is concerned that the requirement to have at least 50 per cent of the crofting community in favour of a buy out is now removed. As the Bill stands, a small minority of the community, and an even smaller number of working crofters, would have the right to make an irrevocable decision on the part of the entire crofting community. The right to buy should only concern those who actively manage the land concerned.

I Melrose
SUBMISSION FROM RAMBLERS’ ASSOCIATION SCOTLAND

Part 1 (Access Rights)

Introduction

1. This evidence reflects our experience in representing walkers’ interests in Scotland since 1935. Our views on access legislation have been informed through participation in discussions initiated by Scottish Natural Heritage and their predecessor body, the Countryside Commission for Scotland. We were a founder member of the Access Forum in 1994 and have attended every meeting of the Forum over the last seven years. We work with many other interests representing outdoor recreation and the provision of access facilities, both in Scotland and other European countries.

General principles

2. These are the general principles which we hope will guide the Parliament as it considers Part 1 of the Land Reform (Scotland) Bill:

The existing basis of access. Fundamental to this legislation is the need to make the existing legal basis by which access is taken better known and more secure. There is a real risk that, in relation to the public’s right to be on land, we may find ourselves worse off than now. Members need to fully understand the existing position and avoid undermining this in any way.

Practical effect. The legislation needs to have real practical effect in dealing with those who unreasonably obstruct access. Equally important, it should not be detrimental to those who already manage land in ways which are sympathetic to access.

A better relationship. Compared to other European countries Scotland has a poor relationship between those who manage land and outdoor recreation interests, especially in the lowlands. There are too many disputes and too few access opportunities. A new framework is needed to help establish a more harmonious relationship.

Trust the public. The recent experience of foot and mouth disease clearly demonstrated that the public would respond to advice about restraining their access to land when justified. Sound advice, not excessive regulation, is the key.

Perception. The Scottish access legislation must be clear and straightforward and not allow those interests antagonistic to access to frustrate its purpose by promoting confusion and misunderstanding. Areas or activities which fall outwith the right must be kept to an absolute minimum. Everyone - including overseas visitors - needs to be sure that they can take access to most of Scotland, providing they act responsibly and follow the guidance in the Scottish Outdoor Access Code.
Excluded areas. The statutory right of access should not apply to the curtilage around properties and to specific areas identified in other legislation for reasons of safety, security, conservation etc. Elsewhere all restraints should be based on the advice within the Code.

New paths. Scotland needs a massive increase in the quantity and quality of paths, for all types of users, in most lowland areas. The new legislative framework needs to ensure that this can actually happen, in an effective and efficient way, to meet many environmental, social and economic objectives.

A welcoming country. Another clear message from the foot and mouth experience is the absolute necessity for Scotland to appear as a friendly and welcoming country to any visitor. The economic basis of a huge part of the tourism industry depends on this. The new legislation must facilitate this by helping to change attitudes, by opening up “private kingdoms” and ensuring that, wherever you go in Scotland, a good footpath network awaits you.

Changes to the Draft Bill

3. We welcome most of the significant changes made to the Draft Bill as a result of the public consultation process. In particular we welcome the removal of several provisions: the proposed powers of landmanagers to suspend access rights; the power for local authorities to exclude named persons from land and the use of criminal law sanctions. Such powers should not have been put forward in the Draft Bill in the first place - they were never proposed by the Access Forum, SNH or sportscotland nor suggested by the Scottish Executive (or Scottish Office) in pre legislative discussions.

4. We also welcome the introduction of obligations of responsibility on landmanagers (section 3), which helps to give much more balance to the legislation, as well as a clear attempt in the Bill to maintain the common law position and not erode our existing rights and freedoms. Other important additions include the duty (as opposed to the original power) laid upon local authorities to uphold access rights (section 13) and new powers for SNH to safeguard conservation interests (section 26).

Remaining concerns with the Bill

5. While we regard the Bill as introduced as a good framework for the new legislation we have four general concerns:

Complexity. There is too much detail in the Bill as the legislation attempts to define in precise terms where and how the statutory right of access can or cannot be exercised. Ideally we would wish to see the statutory right of access defined more along the lines used in the Scandinavian countries, which provide the best models for Scotland. We understand, however, that this is difficult to achieve at the present time while Scottish legislation still seems to follow the structures and approach used in the Westminster Parliament. Nevertheless, we believe every effort should be made to reduce the detail in the Bill and in particular to place as much as possible of the detail of how to exercise the right of access in the Code rather than the Bill. This
will enable the public to understand the legislation much more easily and will allow for flexibility and precision in advising the public, and landmanaging interests, on how access rights work on the ground.

**Regulation and Rules.** There is now too much emphasis in the Bill on the regulation of access and the introduction of the new “regulatory” terminology along with the existing description of the Code as providing the “rules of responsible conduct” gives cause for concern. It gives an impression of excessive restriction which should not be the outcome of this legislation. Related to this is considerable concern that the Scottish Executive have not published the latest version of the Code until a couple of days before this evidence has to be submitted to the Justice 2 Committee. Also this version of the Code has been drawn up without any input from the Access Forum, which has been non operational since February, when the National Farmers Union of Scotland withdrew its participation. So we urge the Committee to examine both the Bill and the Code to try and minimise the sense of regulation and restriction in the legislation while maximising the sense of positive encouragement and welcome.

**Obligations on public bodies.** There is a need for an additional section in the Bill to lay obligations on all public bodies to both abide by the requirements of this legislation and to help further its purposes. This would ensure that the Act led to a real and obvious shift in public body attitudes and consequential action on the ground to improve access opportunities.

**Curtilage and farmyards.** The Bill has not addressed a serious problem, relevant to most areas of Scotland, where a lot of existing access follows routes which go close to farm buildings or through farmyards. Such routes are rarely rights of way. Under the proposals in the Bill such areas are likely to be defined as curtilage, to which the new statutory right of access would not apply. Many farmers would use this as an opportunity to stop access without providing practical alternatives. It needs to be made clear, either in the Act, the Code or in ministerial statements that access is expected to continue through farm curtilages under this legislation unless the farmer and local authority have reached an agreement on practical alternative(s) and implemented the new arrangements.

**Protecting path quality.** There appear to be no provisions in the Bill to protect those paths of particular scenic or historical value. There needs to be a duty laid upon local authorities to identify such routes, to notify them to landowners and to place an obligation on landowners to notify local authorities of any potentially damaging activities. Measures to restrain landowner action, if this would damage the path, need to be incorporated into the Bill. Otherwise more attractive footpaths will be converted into ugly bulldozed roads.

6. Our remaining, more detailed concerns, follow the Bill section by section:

**Purpose of the Bill.** We disagree with the introduction of the words “and regulate” into the aims of the Act and have reservations about the continuing use of the term “to confer”. We would prefer the introduction to read “An Act of the Scottish Parliament to secure public rights of access to land .....".
Section 4 - Ministerial powers. We feel this section gives too much power to ministers to make substantial changes to the legislation after it comes into operation. We recommend it is removed and replaced by a process which ensures that if additional access restraints or restrictions are needed subsequently these are achieved by modifications to the Code (subject to positive resolution by the Scottish Parliament), extension of byelaws or by modification of other legislation which restricts public access for specific purposes.

Section 6 - Excluded land. We feel this section contains too many exclusions. The issues they raise would be best dealt with in the Code. These include exclusions for “privacy and undisturbed enjoyment of the whole” (b.iv), land held by the Queen etc (e), land developed or set out as a sports or playing field etc, or for a particular purpose etc(f), land growing crops etc (j - qualified by section 7 (7)).

Section 8 - More ministerial powers. We have similar comments to those on section 4 above.

Section 9 - Conduct excluded from statutory access rights. There are several examples of excluded conduct in this section which would be far better dealt with in the Code, such as business/commercial activities etc (2.a), taking away anything in or on the land (2.c) and damaging the land or anything on it. The most serious of these is the exclusion of business/commercial activities. While we accept the need to provide advice on such activities in the Code we feel to incorporate these as exclusions in the Act would be impractical, confrontational and damaging to economic development. Such an exclusion is unworkable and would almost certainly make the statutory right less than the existing common law situation.

Section 11 - Local authority exemption and exclusion powers. We consider these powers to be excessive and would be misused by over zealous local authorities keen to regulate public access. There are recent examples of local authorities who acted in this way during the foot and mouth crisis contrary to Scottish Executive advice and instructions. We suggest section 11 is removed and replaced by a section more on the lines of section 26. This would provide local authorities with advisory and management powers for access analogous to SNH plus extensive byelaw making powers, over any land and water. That should be sufficient.

Sections 17 and 18 - Core paths. These sections appear to give duties to local authorities to plan for the development of core path networks but place no obligations upon them to actually establish the networks on the ground. Some additional provision(s) is needed to ensure that local authorities are required to create the networks and undertake adequate management action to ensure the network continues to be satisfactory for use.

Section 22 - Ploughing of paths. Eight weeks is far too long for a ploughed path to remain in its ploughed state, without reinstatement. An amendment is needed. Furthermore, the Code needs to indicate that, when a path or any other route has been ploughed, access can continue to be taken immediately after the ploughing (subject to obvious safety considerations), with reinstatement action by the landmanager following soon after.
Section 26 - SNH powers. The additional powers for SNH appear satisfactory but we would wish to see some arrangement for public consultation over significant restrictions, such as with the local access forum, along with an appeal procedure. We also believe the legislation should include a specific reference to SNH having the power to enter land and carry out appropriate management action in relation to access. This power is also required for local authorities (see section 11 reference above). Historic Scotland should also be given equivalent powers to those granted to SNH.

Concluding comments

We appreciate the opportunity to submit evidence to the Committee on this legislation and would be pleased to provide oral evidence or additional supplementary information if requested. We intend also to contribute our views during the stage 2 process.

L Burnett
Campaign Officer
SUBMISSION FROM THE SCOTTISH OUTDOOR RECREATION NETWORK (SORN)

Introduction
This evidence is submitted in reference to Part I of the Bill, Access Rights.

The Scottish Outdoor Recreation Network (SORN) welcomes the Land Reform Bill and the improvements it makes on the draft Bill. In particular, SORN welcomes the dropping of landmanager powers of suspension of the right, police powers and local authority emergency and exclusion powers. SORN supports the introduction of duties on local authorities to uphold access rights and develop footpath networks.

SORN welcomes the fact that the Scottish Executive has listened to the will of the public, adopting an open-minded approach to the review of the draft Bill and taking on board many of the crucial concerns and recommendations of those seeking a countryside where responsible access is assured and can be enjoyed with confidence.

Recreation Network
This response is being submitted as the SORN response but is also submitted as part of a network of bodies representing recreational interests (the Recreation Network). These include the Scottish Countryside Access Network, the Scottish Sports Association, Scottish Environment LINK and SORN. SORN itself is a forum made up of eight umbrella bodies which represents the interests of hundreds of clubs, groups, companies and leaders across Scotland and thereby, thousands of Scots. SORN represents the views of natural resource based recreation generally but is distinctive in the Recreation Network for its representation of commercial interests, educational interests and youth interests, as these relate to access and recreation.

General comments on the Bill
SORN considers that the Bill would benefit from simplification and that much of its detail could be adequately advised on in the Code. SORN considers that the Bill should introduce a general duty on Government departments and public bodies to further the aims of the legislation. SORN also considers that the Bill should be more explicit on the need for the right of access and its responsible exercise to be promoted. It is vital that all, especially the young, are educated, informed and understand their new rights and responsibilities of access. The outdoor education sector was not a party to the Access Forum and yet its role may be crucial in such matters.

Detailed concerns with the Bill
1 The title paragraph of the Bill, which outlines the purpose of the Act, differs from the draft Bill in that it introduces the words and regulate to public rights of access. The draft Bill simply conferred these rights. The Bill was never intended to regulate access. The introduction of regulation of access conflicts with the aim of improving opportunities for the public to access Scotland’s outdoors. The Bill is now vulnerable to amendments and modifications justified on the grounds that they are needed to help
regulate public access. The words and regulate should be removed from the Bill with regulation advised on in the Code.

2 In relation to the above point, SORN is concerned by powers which are invested in Ministers to modify the Bill (S4 and 8). Such powers could be used to modify sections of the Bill, for reasons of regulation, as well as for other reasons, that could have significant implications for the implementation of the right of access and the enjoyment of recreation. SORN considers that such powers are too wide ranging and could be used to make significant changes to the right of access. SORN considers that such powers should be removed from the Bill or that they should be modified in some way to make consideration and decisions on them more accountable to the interests that may be affected.

3 SORN is concerned that the right of access will not extend to the curtilage of farm buildings (S6). Many paths and tracks pass through farmyards and are well used as access routes at present. The Bill should acknowledge this and not hamper the continuing use of such routes. The Bill should be amended to ensure that the right of access extends to farmyards with guidance on responsible use and provision in the Code.

4 SORN is concerned by access rights not being exercisable over land developed or set out for a particular recreational purpose while in use (S 6 (f) (ii)). SORN objected to this clause in the draft Bill, on the grounds that the definition of developed and set out was not clear and could extend to a number of recreational areas where access should not be restricted, even when in use. SORN notes that this clause is qualified by Section 7(6) of the Bill, which states that access can continue where it does not interfere with the recreational use. SORN considers that this is still vague and is unsure what constitutes interference. For example, canoeing on a river that it is claimed has been developed or set out for fishing in some way, could be claimed to be interference while it is being fished.

5 SORN is concerned by the exclusion of access from land on which grass is being grown for hay or silage (S7 (7)(b)). It is difficult to identify when grass is being grown for such purposes and SORN fears that this clause could be used disingenuously to restrict access. SORN agrees that there is a specific need to guide responsible behavior in agricultural areas but that the detail of this should be advised on in the Code.

6 SORN objects to the exclusion of access from golf courses for recreational purposes (S 9(1) (e)). This will restrict access for such traditional uses as sledging. SORN considers that a right of access for recreation should extend to golf courses and that its responsible practice should be defined in the Code.

7 SORN is concerned by the exclusion of commercial activities from the right of access (S 9(2)(a)). Identifying and defining what is meant by commercial activity is very difficult. SORN is concerned that youth and school groups, and those not
confident in their own abilities or skills, who often take access under some form of commercial arrangement, will be outwith the right. What will happen to mountain guides and outdoor centres, many of which operate on very tight profit margins? Jim Wallace stated that the Bill would encourage local business and tourism; it is difficult to see how this will be achieved in the context of S9.

The 2001 Foot and Mouth Disease outbreak demonstrated clearly, the huge importance of access and recreation to the tourist economy and thus the whole economy of Scotland; the Bill could have a significantly detrimental impact on this sector. Such proposed restriction does not exist in any other European country.

SORN considers that if commercial activity is kept outwith the right of access, a perception will develop amongst landowners that, regardless of existing traditions, they will be at liberty to prevent such access. SORN is concerned that such access will be continuously challenged in certain areas to the point that activities will cease to be viable concerns.

It is important that the Bill confirms what happens already and does not impose any new restrictions on activities that are not currently causing problems. It is considered that commercial activity should be in the right and its responsible access defined in the Code.

Furthermore, it seems ironic that educational groups (whether in the company of mountain or river 'guides', teachers or instructors) could be excluded from the right (or potentially asked to pay for access), when these groups are precisely those likely to be taught the rights and responsibilities associated with access.

It is noted in Section 5 (3), that the new right of access does not diminish or displace any other rights of entry, way, access or passage. Is an existing tradition of commercial access considered as such a right? Furthermore, as there is no existing law stating that an individual cannot make a living from access, the introduction of such a law could be subject to challenge under the Human Rights Act.

8 SORN is concerned by powers that have been given to local authorities to exempt particular land and exclude particular conduct from access rights (S 11). It is difficult to see why this power is needed, given existing powers that local authorities have to regulate access and the new, more extensive byelaw powers introduced in the Bill. There are no reasons given to explain why or under what circumstances such powers are needed or would be used. SORN is concerned that such powers will be poorly implemented, without proper justification and with inconsistent application across local authority areas. SORN base this concern on the experience of access restriction by local authorities during the 2001 Foot and Mouth Disease outbreak.

9 SORN is concerned about trying to comment on the Bill in the absence of the Scottish Outdoor Access Code. There are a number of areas in the Bill that are difficult to comment on without knowledge of the Code. Many areas of the Bill are
expanded on and explained in the Code, making it difficult to understand and effectively comment on the Bill without sight of the Code. The Bill, for example, states that you can access golf courses to cross land. Does this include crossing greens, tees and fairways, by horse, bike and foot? It is presumed not, but until SORN see the Code, it is difficult to comment.

SORN understands that Scottish Natural Heritage (SNH) is redrafting the Code, in time for committee consideration of the Bill in Stage I. SORN objects to SNH revising the Code in isolation, without consultation with constituent interests. This runs contrary to the inclusive approach under which the draft Code was prepared. Without such an inclusive approach, the necessary consensus for the Code will be missing. The strength of the Code and the only way it will work is by consensus.

Section 10 (2) of the Bill states that SNH must consult in drawing up the Code. SORN is unsure why, then, SNH is revising the Code in isolation.

**Oral Evidence**
As well as representing the interests of a range of recreational activities, SORN is distinct in the Recreation Network in its particular position to provide evidence on commercial interests, on formal and informal education issues and from youth organisations such as The Guide Association and the Duke of Edinburgh’s Award.

F Nelson
Chairman

**SORN is composed of the following 8 umbrella bodies:**

Activity Scotland; Outdoor Learning Scotland; Scottish Advisory Panel on Outdoor Education; Scottish Association of Local Sports Councils; Scottish Countryside Activities Council; Scottish Environment LINK – Access Network; Scottish Sports Association; YouthLink Scotland.
SUBMISSION FROM VISITSCOTLAND

Conduct excluded from Access Rights.

VisitScotland welcomes the redrafted legislation, particularly where that has accommodated the concerns raised in our previous submission. (29th June 2001 refers.)

However, VisitScotland must again express very real concern at the inclusion in this redrafted version of Section 9 (2)(a) of Chapter 3, i.e. “conducting a business or other activity which is carried on commercially or for profit or any part of such a business or activity”. VisitScotland regards this proposal as both inappropriate, if not insidious and particularly ill-timed.

The tourism industry in Scotland is continuing to operate in difficult trading conditions, e.g. the strength of the £, and is still taking substantive measures to recover from the adverse impacts of Foot and Mouth Disease and the more recent September 11th tragedy in New York.

The economic fall-out from these two significant events in 2001 has clearly impacted upon tourism businesses across Scotland many many of which are SMEs, if not enterprises based upon an individual. To further financially penalise those businesses in the activity, outdoor and wildlife sectors by excluding them from access rights is not acceptable and could result in many ceasing to operate.

Whilst this is clearly regrettable and of course avoidable from the point of view of the individual business, at the national strategic marketing and product development level this could seriously and substantially erode Scotland’s international competitive advantage in the area of outdoor activities, particularly walking and wildlife watching.

These activities are important across Scotland but have particular relevance to the economic underpinning of many remote, rural and island economies. This provision will do nothing to ameliorate regional disparity or to underpin sustainable economic development.

VisitScotland is developing new Brand priorities and a strengthened Product Portfolio, two of which are Freedom of Scotland and Outdoor Activities. Wildlife Watching is an integral component of the first, with walking and cycling fundamental to the second. Here again this draft legislation could seriously detract from these positive forward looking initiatives.

Whilst VisitScotland recognises and respects the right of landowners to manage and to gain economic return, is it not more appropriate that this is achieved through partnership and collaboration rather than confrontation and entrenchment? Would it not be better to put resources, energy and time into adding value and enhancing visitor experience rather than putting obstacles in the way of legitimate business activity?
The general principle of a right of responsible access should be regarded as an opportunity whereby we all make the most of our natural resources to generate economic and social benefits through sustainable use.

Opportunities should be based upon adding value to the product and enhancing visitor experience – an opportunity for partnership between outdoor and activity operators and landowners.

If we are to move towards a more inclusive and holistic approach to development, encompassing social, economic and environmental development, we need to do so based upon joined-up thinking and policy and strategy alignment. Clause 9(2)(a) will do nothing to facilitate the above but will instead bring about confrontation and additional economic pressure on already vulnerable businesses.

VisitScotland strongly recommends that Clause 9(2)(a) be withdrawn from the redrafted Land Reform (Scotland) Bill for the reasons outlined above.

Neil Black  
Manager  
Tourism Futures