

ACCESS: THE REALITY FOR FARMERS, LANDOWNERS, FORESTERS AND ALL RURAL RESIDENTS

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This document is written in response to the concerns raised by reading the advice given to the government by SNH prior to the formation of the Scottish Parliament. However it is likely that much of the document may remain as a basis for legislation by the new parliament. Therefore I advise anyone who wishes to find out more about this subject to get a copy from SNH. It is called:

*Access to the Countryside for Open Air Recreation
– Scottish Natural Heritage's advice to
Government (1).*

and is available from SNH at Redgorton, near Perth.

Having made my own representations to the Land Reform Policy Group (Scotland) and its proposals on land reform, I obtained a copy of the linked document dealing with access to the countryside. I believe there are many important items covering the subject of access which need further action.

These items require further debate. If the policies at present under discussion were to form part of the new legislation (i.e. proposed Land Reform Bill Scotland) without amendment, they will burden Scotland's farming communities with policies on access that will adversely effect rural farming communities. At worst they may put at risk the sustainability of agricultural holdings and their environmental responsibilities.

To help identify the shortcomings and highlight the issues which would effect them, I have written this report.

A demand for further action to be taken by:-

- The Scottish Landowner's Federation (SLF)
- The National Farmers Union of Scotland (NFUS)

regarding the above mentioned publication (1).

When the government at Westminster, through the Scottish Office and Lord Sewell, instigated the review of land reform in Scotland the question of access was separated from the main review. The subject of access was delegated to Scottish Natural Heritage to offer advice on that subject. This advice would then be available, if required, by the Scottish Parliament and perhaps form a part of the basis in a bill on land reform. Scottish Natural Heritage brought together a number of representatives of government organisations, non-governmental organisations (NGO) such as the RSPB and SOAFD and also individuals to form a committee who could deliver their findings and offer the advice as requested. The committee, which includes representatives from the NFUS and the SLE, is called the *Access Forum* and their findings are published in the document already referred to. It sets out the current laws on access as well as pre-

senting a basis for changing the law on access in the future. It is an important document for all those with an interest in managing, living in, working in, enjoying and preserving Scotland's countryside.

The impact of many of the proposals it contains will have a major effect on all of Scotland's farms, estates and crofts. It is already acknowledged by the Forum and land managers that the effect and circumstances in Upland and Highland areas are different and need a different approach to that required in Scotland's Lowland areas. It is on these farm holdings situated in Scotland's arable and livestock areas where the impact, in my opinion, will be felt most. In particular those holdings, farms and estates in proximity to urban settlements.

The Access Forums' advice document starts with a preface which introduces the proposals which follow and sets out some basic principals. These are:

“After extensive and rigorous debate the access forum has now advised SNH that the best way to meet the Government's wish to create greater freedom for people to enjoy the countryside is to change the law to create a right of access ... This right should be qualified by some general principals, notably that access should be undertaken with responsibility and with respect to the privacy of those who live in the countryside. It would also be subject to specific limitations to safeguard land management operations and conservation requirements.”

[The Preface, page 3 para 2]

The Introduction on page 5 of the report reviews the process used and is summarised in six key statements.

“The Forum's proposals represent the consensus view of its individual members who have canvassed opinions within their organisations but without, at this stage, their full endorsement.”

[Introduction, para 5]

“The Access Forum's advice to SNH thus enjoys a high degree of legitimacy through the process of internal consultation and collective debate and is immeasurably strengthened by having been reached through consensus by all the main parties but it still remains to be confirmed formally by all the bodies represented on the forum and to have a wider public endorsement. In these circumstances, SNH believes that further public consultation is desirable at some point in the future; this might be most appropriate after the details have been developed.”

[Introduction, para 6]

The SLF recently published a statement in their 1999 election bulletin that states:

“they welcome the document...”

and describe it as:

“A balanced package of measures for access to Scotland's Country Areas.”

KEY WORDS

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ABBREVIATIONS

LFA Less Favoured Area
NFUS National Farmer's Union of Scotland
NGO Non Governmental Organisation
RSPB Royal Society for the Protection of Birds
SLF Scottish Landowner's Federation
SNH Scottish Natural Heritage
SOAFD Scottish Office Agriculture and Fisheries Department

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In my opinion, it is impossible to reconcile the statements made in the preface and the reviews in paragraphs 5 & 6 with the statement above from the SLF. They cannot claim to have canvassed their members when they have not. Therefore the members have not endorsed the position taken by the SLF.

The NFUS (National Farmers Union of Scotland) policy of informing their membership on these proposals for access has been invisible. Their record is chargeable with what I would describe as gross neglect. Only in the April/May issue of Farming Leader, tucked away on page 12, is there a mention of land reform and access. It simply states:

“Sub-groups of the access forum are looking at details of the advice which the Forum has given to Ministers. It seeks to enquire what is meant by responsible behaviour...”

and says:

“...new rules would effect both those providing access and those using it.”

It does not alert itself or its members to the real effect these measures will have on farmers. Therefore a claim can be made that neither the NFUS nor the SLF have canvassed their members when given the opportunity to do so by SNH.

It is a fact (possibly deliberate) that the existence of the *Advice on Access* document, has not been well publicised. It is probably true that unless someone had already read the main document on Land Reform, they would not have known that a separate paper on access was being produced by SNH. Even this information is somewhat obscure in the document on Land Reform. One might take the view that it is up to individuals to take whatever action they feel is best. On the other hand both the SLF and the NFUS enjoy their status as a NGO by representing their large membership. When an issue such as access is the subject of legislation, which will affect every farmer, landowner and land manager, it would not be unreasonable to expect them to consult their members and draw attention to the changes proposed. The consultative process adopted by the NFUS has been non-existent.

The consultative process adopted by the SLF has been obscure and does not meet the consensus of can-

vassed opinions as expressed in the Forum's statements. Having attended several central regions meetings, where the subject was rather brushed aside by the chair, I learnt (in private discussion) from the SLF access officer, Marion Silvester, that the decision to support the Forum's views were taken by the Regional Committees to *speed things up!* Significantly, it became apparent to the SLF that a further factor effecting consultative process would influence their response; when the government told Scottish Natural Heritage (and therefore the SLF as they were part of the forum) that the timescale was too short to allow widespread consultation.

As a result of the decision to short cut the consultation period, a number of vitally important and fundamental issues have been overlooked. Referring to the preface on page 3, the Chairman of SNH outlined these fundamental principals as:-

- Access with responsibility
- Privacy for those who live in the countryside
- Safeguarding land management operations
- Safeguarding conservation requirements

It is on these overriding subjects that shortfalls and omissions in the advice document have come to my attention. I hope that by drawing attention to and identifying these, they will not now be overlooked or ignored. They MUST be part of the debate when the Bill comes before the Scottish Parliament. I also sincerely hope that many other people will add their weight to these arguments. The concerns of Land Managers in upland and Highland Scotland will, on some issues, vary from the opinions expressed here. It would certainly be desirable to hear of those concerns from those qualified to express them, which I am not.

My own study of the publication revealed (to me) several aspects of the document which did not adequately safeguard the interests of, and address the concerns of, people who manage land in Lowland Scotland. Such land will be in NON LFA and LFA parts of Scotland. The farms involved will be all arable, mixed, livestock or even dairy. They may have woodlands in WGS, FWPS. They may have mature woodlands under their own management policies or under FC schemes. They may be remote or close to urban settlements. They may also be affected by main roads or even motorways.

The concerns and omissions in the document can be broadly summarized under these headings:

- a. Responsible Access and the Countryside Code
- b. Definitions of places where restrictions apply
- c. Conservation
- d. Ensuring access is structured so as to spread the burden in a fair way.
- e. Farms in Non LFA and LFA areas, Mixed Arable/Livestock/Woodland and Wildlife Habitats.
- f. Management operations

GENERAL

The importance of access, especially when it is close to where people live, is a recurring theme in the document. It is stated that access is part of a new policy agenda for land reform, rural development, transport, health and social inclusion.

For the traditional arable mixed livestock farmer, the intended increase in the numbers of people walking (or cycling etc.) on their farms and woods will present additional burdens and pose more problems as it is proposed that:

- every path and track can be used
- more tracks and paths will be signposted
- new paths and tracks can be created.
- a high proportion of those new routes will be near to where people live.

It is therefore obvious that the impact of access, already experienced by those who manage land near or adjacent to settlements, will increase. The document correctly identifies a number of problems widely experienced by land managers and farmers and states on page 32, para 5.3.3. that

“The concerns of land managers must be addressed.”

For the farmer and land manager the adverse effect of increased access together with a much greater number of signed routes, will pose difficult questions. In the case of livestock producers, the adverse effect will

be greater, especially on Non LFA and LFA farms close to urban settlements. It will be worrying to land managers to find that the proposals have insufficient provisions and mechanisms to address and solve the problems which will arise. The following statement on page 6 illustrates this point. It states:

“...that operational needs of land managers and conservation needs are only subject to responsible behaviour.” (Presumably this means by the person participating).

CONSERVATION

The SLF, NFUS and other members of the Access Forum including the RSPB, should be reminded of Scottish Natural Heritage's keynote statement.

SNH's remit is:

“...to secure conservation and enhance Scotland's unique and precious natural heritage the wildlife habitats and the landscape which has evolved through the long partnership between people and nature.”

Stuart Housden, the Director of the RSPB, called for the new Scottish Parliament

“To place conservation and biodiversity at the heart of its work.”

With these organisations at the centre of setting the agenda on conservation it is, in my opinion, a serious indictment on those who have created this advice that conservation gets almost no consideration in terms of actual policies. Unless the lack of detail is remedied, it is my view that retention and creation of wildlife habitats will be under threat.

One of the few statements on conservation is on page 6, where it says

“...that arrangements to create limitations to the right of access will only apply where significant land management and conservation interests are at risk.”

So it seems to me that those who have also pursued policies of amenity improvement and put into prac-

tice conservation measures over many years as well as taking part in new conservation schemes, the prospect of their valued effort being damaged must not be put under threat by a local council or Access fora (for example), by claiming or saying that a site is **not** significant.

RESPONSIBLE ACCESS AND THE COUNTRYSIDE CODE

The main concerns (that I can see) are as follows:

Some definitions require amendments and some added. These amendments will ensure that land managers and farmers can continue to operate viably, within the rules and undertakings they are legally committed to and at the same time welcome increased access onto their land.

As previously stated, the publication sets out the current law in Scotland on access and then goes on to set out what they describe as a vision for the future and how this vision might be delivered. The wish is that a Scottish Parliament will deliver a Bill based on the advice given by SNH; either by reforming current law on access, or creating a new Bill. This will be (as the publication describes), to create a RIGHT OF ACCESS OVER LAND AND WATER with responsibility for recreation and for passage. It states:

“...whilst people have a clear entitlement to be on land or water, that it is essential that access is exercised responsibly with respect to land management and conservation. The entitlement will not extend to the curtilages of building or places where the public are already excluded by statute. Access for informal recreation and passage will be subjected to causes for exercising this right with responsibility. A major programme of promotion and education of the rules will be encompassed by a new SCOTTISH COUNTRY CODE.”

The Country Code has not yet been finalised, although it is clear that being part of the proposed legislation, compliance with it will be the overriding position for everybody using access for recreation and passage. It is important to understand that if the Bill passes through parliament the overriding onus on people is to understand and comply with responsible behaviour as laid down in the Country Code. As already stated, the publicity to bring the code to the public's attention will require many initiatives, therefore it states:

*“A major educational and promotional effort is essential.”**

[Page 16, para (e)]

The policy of promoting the code through education on its own, is NOT likely to solve the problems experienced now, therefore it will not meet the concerns of farmers and those who also **work and live** on Scottish Farms. There are many existing laws and regulations covering 'acceptable behaviour' and activities in place now. It is a reasonable assumption to make that **the vast majority of people who break these laws do know they are committing an offence** and through habit or deliberation they choose to ignore. I am sure that if the public were to demonstrate over a period of time that they wish to comply with the laws at present (covering common offences such as fly tipping, chewing gum on pavements and rubbish thrown away in towns, on roads and in the countryside), that once this improvement was demonstrated, only then would the policy of promotion and education be seen to have been effective. A major concern of all land managers at the present time is, quite frankly that the public are not demonstrating to them that they behave in a responsible way. On the contrary, the situation is deteriorating fast. I am sure that every land manager in Scotland has a continuous problem with such offences on a daily basis; but I am also sure if it was perceived that a significant reduction of this type of offence was occurring, then land managers would accept that a code would deliver access in a harmonious way. So until it is established that a significant trend in reducing this type of degrading activity is well under way, the question of implementing further access should be delayed. It would be reasonable for a delaying mechanism

*Footnote: A recent Mori Poll for the National Farmers Union of England and Wales showed 70% of the public did not know when peas or broccoli were picked and 54% did not know when to expect new potatoes and nearly half did not know when English apples were harvested. This perhaps indicates that the question of educating people goes deeper than just the Country Code.

to be built into a Bill on access - this could be done on an area basis.

DEFINITIONS OF RESTRICTIONS AND CONSTRAINTS

Despite the NFUS & SLF being represented on the Access Forum, both these organisations have failed to notice the shortcomings of certain definitions with regard to restrictions to access. Various restrictions to access will be incorporated into the Bill. Some of these restrictions are identified in paragraph 6.2.17 and 6.2.18. Under the headings of *safety* and *privacy*, it appears that farms are not identified as such. It is vital that farmers are accorded the same level of protection as factories and yards for example. This would mean a new definition (to describe the Centre of Farming operations) to be added to the text. It would mean describing the curtilage of a farm so that it encompasses the whole centre of farm operations to include the roads and tracks which often form part of the centre of the farm.

As stated previously, the farms situated close to towns and villages already experience the negative effect of access (some of which are listed below). Land managers would in my opinion take a more positive attitude on this subject, if they can ensure that paths, tracks etc. are NOT signed through the farm centre. In practice this would mean that where a farmer wishes to exclude the public (for reasons of safety and privacy) from the centre of the farming operations (for the reasons stated below), he can meet the aims of improving access by creating a new route or path around the sensitive area. The provision for rerouting paths for access is already in place in the document, and therefore this policy must be used when land managers find it appropriate.

It would be encouraging to the land manager to be able to elect for other restrictions in specific situations. I believe that this would be acceptable to the principal parties concerned, namely the owner of the land, the local authority and the public. Therefore provision for such restrictions should also be written into the legislation. These cases would probably be at the request of one of the principals. The area or zone to be given this status would be for a specified reason. For example: a land manager may be following specific conservation objectives and so on. When you think about this, it seems to me that the local council may be required (even have

a duty) to ask owners of land if they have specific areas which may need added protection or restriction. In most cases such a restriction will not have an adverse effect on the general right of access. Therefore, the legislation to allow this to happen must be incorporated into the text of the Bill.

The delivery of legislation for access will be through local authorities, so the provision of a method of arbitration must be included into any new legislation (see recommendations).

To try and illustrate the ways in which access can be easily understood and discussed, I have used my own designations, under the headings, A,B,C & D for the purpose of this paper. The Countryside Code must cover these basic categories and address the problems which can be anticipated to occur there.

- A *Constrictions to Access*. i.e. No Public Access e.g. Centre of farm operations including the related roads and tracks where the general public would not be allowed except by invitation and to conservation areas. Land under IACS rules.
- B *General Access*. Where the public are not under constriction.
- C *Sign posted Access*. Where the public can go on either marked public footpaths, rights of way and on newly created paths.
- D *Managed and Permitted Access*. Where the public may go by payment or invitation or permit, because they are taking part at an organised event, attending an open day or using their permit for its designated purpose. For example, Scotland's Garden scheme, farm walk or organised competition or riding.

Constrictions to Access

The document rightly gives *Safety and Privacy* as two reasons for restriction. In the preface it states that management operations must be covered; therefore, to comply with its own brief, two further definitions should

be added, namely *Security* and *Management Operations*.

In the following sub-headings I have tried to illustrate the most common activities on farms and farm woodlands which are covered by safety, privacy, security and management operations. Using my own code to illustrate the point, these are:

A Areas

Available for restrictions and constraints. Reasons - safety, privacy, security management operations and conservation. The activities taking place on farms are summarised below.

- i. Livestock movements.
- ii. Vehicle movements. Tractors, HGVs, LDVs, forklifts.
- iii. Farm chemicals, fertilisers, sprays and pesticides.
- iv. Criminal opportunities/crime prevention.
- v. Farm accreditation schemes, e.g. loss of SQCSS status.
- vi. Amenity. Loss of, for the resident community.
- vii. Hygiene. Protection of residents, livestock and accreditation.
- viii. Arable Crops. Permanent and temporary grass with and without livestock and conservation areas.
- ix. Conservation
- x. Fire Risk

Note The A zones will usually be at the Centre of the Farm where buildings, dwellings, livestock and machinery are kept. It should be noted that usually the farm is the centre of a network of roads and tracks which enable the farmer to conduct his farming operations. It is these areas which the Access Forum has correctly identified as being the areas of most concern to farmers/land managers. The current text only gives protection to a factory or a yard. Therefore under the heading of restrictions; para 6.2.17 and 6.2.18, the word to describe a farm yard and its curtilage, must be added. Legislation

must give protection to the area which encompasses the whole Centre of Farming Operations (which it does not in the current text) including roads and tracks, as in a factory or yard. (Some farms may have several such areas). Conservation areas must also be added to the list of reasons for possible restrictions.

Further explanatory notes on (i to x)

- i. *Livestock*. Livestock movements on the hoof, constitute a large part of the daily operation for management, breeding, weighing, scanning, vetting, transport on/off the farm and animal health schemes. On livestock farms, the farmers options regarding these operations are strictly controlled by the EUIISOAFD rules of the Integrated Administration Control System (IACS) and its related schemes such as SCPS, SBPS, SAPS, CSPS etc. The livestock movements will be within the farms curtilage and also to and from fields and from field to field. The period of time in fields can vary from as little as half an hour up to several months. There will be sub movements for various managerial reasons. Livestock on non LFA farms and LFA, as opposed to other upland areas, will mainly be located on either permanent or temporary grazing, however, they are often put out onto other land, such as stubble after harvest, or root and fodder crops. Therefore, the need to safeguard a farmer's viability within these schemes, to locate cattle (on his own or rented forage areas, including breeding bulls) where he wishes, even if a path passes through a field, or to locate cattle on fields after other crops such as fodder or grain, must be recognised. **The regulations are complex and invoke severe penalties for the farmer if broken.**
- ii. *Vehicles*. Vehicle movements for the categories above are often at a constantly high level. It is asking too much to allow the public into these areas; it is like having a public path through a busy transport yard handling special materials. I believe the HSE should be consulted. I also believe that if a land manager were to write his own risk assessment, then he would probably have to identify situations, which could lead to serious problems. The document says that legislation will clarify in law that people engage

in open air recreation at their own risk. My own experience, having hosted events on my farm, whether the public have paid to come or been welcome at no charge, is that a risk assessment which will stand up in court in the event of an incident, is necessary. It is also easy to get it wrong, leading to very serious consequences for the land manager.

iii. *Chemicals* Chemicals on farms can be stored and used in a variety of ways. These are used for crop sprays, fertilizers, animal health. They may be in bulk liquid or solid form, canisters and other containers. They are often at a strength which requires dilution before use. All are the subject of regulations regarding storage, use and disposal. Clearly all land managers and their operators are aware of these but despite the care of farmers to comply with these rules, because of their location, the opportunity for criminal interference and subsequent use, makes farms particularly vulnerable. The chemicals can be used or mixed to create highly toxic or explosive substances, so whilst they will be housed according to regulations, the opportunity for mishap or misuse is much greater on farms, because of their rural location, than on an industry factory site. Factory sites storing and using similar substances to those found on farms are nearly always surrounded by security enclosures and the public do not as a rule have general access to them.

iv. *Crime* The relationship between rural crime and public access is well established. Increased access will extend the opportunities for criminal behaviour in rural areas. The present level of crime on farms and their associated communities is not fully acknowledged and not in my opinion adequately addressed by the Access Forum.

The forum may (and do) say that they wish to encourage access with responsibility and that

crime is a separate issue to be tackled as and when it occurs. Bearing in mind the isolated nature of many farms, the high value of stock and the vulnerability of the farm communities and the devious methods of criminal behaviour, it is vital that those living and working on farms should be given every help to sustain their viability, by providing the safeguards in fair legislation. Therefore, legislation should acknowledge and make provisions to cover the land manager from criminal activity. Increasing access near to farms, especially close to urban settlements, will increase the level of risk, followed by an increase in crime itself. Existing schemes such as farm watch are excellent but need the extra protection afforded by legislation to allow paths and tracks to bypass farm holdings. So, where existing paths and tracks and even rights of way pass through farms, often even between buildings, there should be positive encouragement to re route them around sensitive areas.

v. *Farm Accreditation*. Spot inspections from officers on behalf of SOAFD and various farm certified schemes, may reveal that a condition is being broken. As a consequence the status of that land manager may be withdrawn, resulting in financial loss. These operational management activities are regulated by various standards and practices from bodies such as SOAFD, SQCS, SQBLA, AGTB, SEPA. Withdrawal of status may arise for many reasons, some of which may be self-inflicted. However, the penalty is severe and financially disastrous.

Increased access, with paths, tracks and roads close to farm buildings (storing produce for human consumption or industrial use, livestock and equipment) will present many opportunities for an incident (which could jeopardise status) to occur. Many farm buildings are already subjected to intrusion by passers-by, or even the target of a special trip.*

*Footnote: e.g. a simple but common practice amongst the walking and cycling public is to throw bottles away. If a shard of broken glass were found in a pile of grain lying in farm sheds or stacks of straw and hay, this could lead to withdrawal of status if found on a spot inspection. These inspections are mandatory under the Assurance schemes or even EU law. Another serious occurrence with hygienic implications is dog fouling near or on grain for livestock feed or cross contamination of seed varieties etc.

vi. *Amenity.* If an increase in access comes into being on the lines outlined in the document; then it will be farm communities (farmers and their families, their employees and their families as well as other residents living on farms) that will experience a significant loss of amenity. In certain circumstances this may become intolerable for many farms and rural farm communities which are situated in proximity to urban settlements for the reasons outlined here. Land managers must be able to meet their social responsibilities; this means that the residents and the communities on farms are able to live and work and continue to wish to live and work on Scotland's farms and estates. It is a significant feature of sustaining the viability of farms, especially when so many people living on farms already experience the negative side of access. Therefore, ensuring protection to the amenity on farms is vital. The economic reality on many farms would indicate that where the amenity value is perhaps the one reason why a farmer is remaining in business, if this were jeopardised then it does not take long to reverse the work of a lifetime and quit.

vii. *Hygiene.* The importance of observing sound hygienic management operations has never been more important. Management practices concerning animal husbandry, crop management and personal hygiene are continually hammered home to those working in this industry. There are potential opportunities for injury or contracting many illnesses and diseases for those involved. There are also many ways in which contact with many substances and cross infection or contamination can occur. It is important that the Access Forum take into account the risk that increased access on farms and farmland may entail. It is worth noting that some local authorities classify farms as dangerous areas with regard to school visits. Before a farm visit can be arranged there has to be washing facilities for post visit cleansing. This may appear over cautious but perhaps not. A simple example of this is where a person can easily contract ring worm from contact with fence posts, where cattle have had contact with posts. The cattle, may not be showing clinical signs of this disease. At the very least farmers must not be liable for damages when the public contract an illness for passive reasons.

Hygiene is closely linked with many statutory regulations and farm assurance schemes.

viii. *Arable Crops and Grassland.* The Forum has recommended that access on enclosed land will be legislated for. On page 6, it states: "...that whilst they wish to see a network of signposted paths close to places where people live, access will be managed in accord with land management needs." Worryingly, from the land managers point of view, it stops short of saying that people must keep to those paths. It rather vaguely relies on responsible behaviour and the Countryside Code. (Responsible behaviour, in my opinion, should also be expected from those delivering access, i.e. the government representatives, the local authorities. An example of irresponsible attitudes is demonstrated by a booklet on walks in Fife, published by Fife Council, that recommends walkers, when faced with there not being a path going in the direction they are heading, to take to crops and are advised to keep to the tramlines!)

Therefore, all land under IACS regulations (which is all arable, set aside, forage and crops for direct human consumption and industrial use) must be subject to a restriction for access because the proposed countryside code relying on responsible behaviour does not give adequate protection for management compliance.

Management needs are nearly always likely to require a policy of no access on crops and grassland. As an example grass is usually grazed in rotation to allow for the regrowth of sward, for hay, silage and grazing. Dog fouling (which is not mentioned in Annex 3, under Control of dogs) on grass fields is a serious hygienic hazard on livestock farms even under current law. Under IACS schemes there are a number of further management options which land managers may be legally locked into. One such option is the Countryside Premium scheme or CSPS. This scheme is designed to encourage farmers to partake in conservation measures. In this scheme, the farmer elects to create and manage various sites in the ways laid down. One example where this conflicts directly with access is the creation of beetle banks. These 3 meter wide grass strips are by law debarred from access because

access by walking, cycling or riding will damage the habitat and the insects, beetles and other wildlife on these strips. If a land manager were discovered using these strips for access a substantial fine would be imposed. It is clear from this example on its own that, delivering access through education and the code is not a realistic option, unless a complex system of signs indicating the various options in use by the land manager. These options often vary with the seasons or months, which makes compliance difficult, even for those who do understand the rules. Land managers find these schemes fairly complex to understand and operate within the law. It appears that the access forum have not been given the advice they need. It has not been explained to them that the penalties for breaking these highly complex rules are draconian. Like many laws, ignorance is no excuse, so unless SOAFD absolve all land managers from abuses perpetrated by people partaking in access, there will be a state of chaos.

- ix. *Conservation.* The lack of conservation policies in the Access Forum's document has already been highlighted. Clearly this must be amended. The public would be quite shocked at the lack of provision shown. For land managers, many, if not most will be involved in managing their lands with environmental considerations uppermost in their plans. If this were not the case then the fine landscape of Scotland would have disappeared long ago. It is vital that any proposals for increased access must **not** jeopardise the valuable work undertaken already by Scotland's land managers. They have demonstrated over many generations of fine stewardship that they understand the privilege of managing land and maintaining or improving wildlife habitats. Therefore, to fulfil the principals set out at the beginning of the access document any proposals for access **must always** come second to conservation. The preservation and enhancement of woodland and open heath ground as viable habitats for wildlife should be a fundamental consideration on every occasion. This means as stated previously that local authorities have a duty to find out by asking land managers where they require support from

Councils to create restriction or permitted access.

The Scottish Office, SOAFD and the RSPB in their publication - *A Management Guide to Birds of Scotland's Farmland*, highlight the importance of retaining and improving the habitats for at least 12 species of bird who's habitat is the farmland of Eastern Scotland. The distribution maps show population on all farmland from Caithness to Berwick. Some species require open farm land for nesting sites along with other features that conservation programmes encourage land managers to maintain and create. Unfortunately, the human, especially on foot or with a dog, is enemy number one. It is astonishing how a nesting site or feeding area can be rendered unacceptable to bird-life by the impact of human, even in relatively low numbers. Conversely, access by humans when mounted on horse or in vehicles appear to have a less stressful impact. Therefore, the issue of access on arable land as well as paths near them and also farm woodlands which are integrated into the farm landscape, must be reconsidered.

Lord Sewell, when addressing a meeting of Tayside Environmental Business Forum recently, said "Farmers must meet their social and environmental responsibilities. Business people all over the world need to take into account of the fact that their actions today could determine the kind of world we live in tomorrow.

- x. *Fire Risk.* Fire is a constant threat to farms and farm produce. It is important to stress that an increase in access, increases the opportunity to raise fire and therefore the risk. It is equally important to stress that fire is not only confined to the farm buildings and their contents. Fields with growing crops or stored items, and farm woodlands are under constant threat from fire. In nearly every case of this kind it is deliberate and the perpetrators have travelled some distance on foot or bicycle to raise the fire. Once again the question of liability and risk assessment need to be looked at closely.

Having dealt with headings (i.) to (x) we can return to my other classifications for access.

B Areas

General Access. Unrestricted access - on Low-land arable and livestock farms

It is clear that meeting the vision for more access and sustaining viable farming communities on the types of farm outlined here is not entirely straightforward. Nevertheless within the Forum's findings there is one provision which may well ensure that further access can be welcomed and the vision achieved. This is with the provision to create **new paths**. (These are referred to on page 36. para 6.2.15& 17 para 1 and also P6)

The present situation is rather unbalanced in that some lands (farms) have far more paths than others, usually for historical reasons. The Government's remit was to provide access to meet new and changing social conditions where access will be used for land reform, rural development, transport and social inclusion (recreation). Most old paths and rights of way were for rights of servitude, in that they enabled those living in rural areas to get to urban places, for schools etc. This to some extent explains the present network of paths. I have explained that using many of these paths sometimes cause land managers problems that did not exist in the past, even the recent past. The situation is entirely altered from a farmer's point of view. Therefore, it will put an unfair burden on farms close to urban settlements if it is only the same old paths and tracks that are the ones targeted for signing and more access. To help spread this burden, Councils must look at a wider picture, so that the farmhands by their proximity to settlements, are not subjected to increased access, whilst others are not. The creation of new paths, even on farms where there are no existing tracks must play their part in delivering the vision. Farms with woodlands close to urban settlements, must also be given encouragement by councils to continue with their conservation policies, because it is these woodlands which suffer most from access. The encouragement will in some cases be underpinned by allowing restriction or permitted access.

It is important that the Forum is alerted, even at this stage of proceedings to these **activities which are not legitimate and which occur on a daily basis**. Despite reporting incidents to the police, land managers and even Councils find that charges are very seldom brought to Court, especially for these types of common offences:

- litter on paths, farm roads and fields
- dumping rubbish
- dog fouling

It is an accepted fact (by all police forces) that the police do not charge for these activities because it is too costly in time, manpower and finances. Even if a charge were brought, the Courts never, despite having substantial fines at their disposal, use the maximum amount; thereby ensuring that the police seldom follow up the incidents. (app 2). Other types of crime are now regularly committed on farms and rural places such as woodlands. Poaching, camping, coursing illegally, damage to woodlands and wildlife habitats by mountain bicycles, motor cycles, vandalism to trees, woodland fires, dogs off leads, dogs out of control, resetting of stolen goods, buying, selling and distribution of drugs. Livestock release, stealing stones from walls and buildings.

C areas

Signposted Access. Areas where the public enjoy the use of marked paths and tracks, as agreed between the owner manager and the local authority. These will include new paths created by mutual agreement to circumnavigate contentious areas and reach mutually agreed objectives.

D areas

Managed and Permitted Access. Areas where access is managed by invitation as part of an organised event. Where access is controlled by permit for management reason. (Clearly the farmer/landmanager can use any part of his holding, as long as it does not contravene any IACS conditions or SNH/Historic Scotland rules.)

Permitted Access. The Forestry Authority use this method at present to deliver access in an acceptable way, meeting the various needs of management and conservation. This method may or should be encouraged as an option open to land managers and local Councils. The question of specified users, such as walkers, horse riders, off-road cyclists should be given special consideration in all cases, so that where mutually agreed conditions to specify a particular category of access which may suit all parties concerned, a framework to establish these categories should be in place. For example, you may find that a farmer together with their local council agree to

restrict access on a particular place to one category of user; for example walkers only or horses only. The present text says that the interests of these user-groups must be addressed.

What I propose is an amendment that allows land managers to specially constrict all access with the exception of a single category of user. Provision of this kind may help achieve access that is both manageable and welcome and could be the subject of permitted access.

RECOMMENDATIONS

The following recommendations summarise the principal points which the SLF and the NFUS and the RSPB must address. The publication on access is a complex and lengthy document and it is entirely possible that there are other points that other people also feel concerned about. I have summarised the ones that I have identified as follows:

1. Mediation [Page 39. para 6.2.30]

- a) NUFS & SLF will ensure that a mechanism is included into any new legislation for resolving disputes between land managers and local authorities by an independent body. (this means independent from local authorities and the access forum, so that when access objectives are discussed between farmers/land managers and local authorities, a means of solving disagreements in a mutual way, is in place, prior to any plans being put into action).
- b) Local Authorities must be legally bound to liaise with land managers prior to implementing access policies on land under their (the land owner) management. They must also be legally bound to take into consideration the advice from land managers on conservation which may need restriction on their holding(s), even if the area is not officially recognised or documented.

2. Restriction and Constraints [Key Proposals, Page 16, para (d)].

Further action by NFUS & SLF to ensure that the following reasons are added to the current

text which allow an access to be restricted and/or restricted: Security, Conservation and Management Operations.

3. Restriction and Constraints definitions of [Page 37, para 6.2.17 & 6.2.18].

Descriptions of places or areas where the constraints will apply. Amend the current text and add to:- dwelling house and garden, a factory and yard - the following items. vis

- Farmyard(s) and Operational Zone(s) and curtilage
- Specified conservation areas
- Arable fields, forage fields, food crops and set aside; when under IACS.

4. Liability.

NFU & SLF should take further advice on insurance liability. Risk Assessment should be linked to access and insurance.

5. Local Access Fora. [Page 17, para (g)]. e.g. Community Access Forums.

Where access is concentrated close to urban settlements, the balance of those in the fora, (either by proximity, election or other) should be legislated for in a way, so that any decisions having an adverse effect on the land managers' business or conservation viability, are not the result of geographically generated users having an unreasonable influence. Local Authorities should be legally obliged to take advice from land managers on their conservation projects, whether they are private or part of funded schemes, to ensure that wildlife habitats are not at risk from degradation due to access.

6. Exercising the right of access responsibly [Page 16, para (a)].

Remedies & Enforcements [Page 16 para. e]. The Key proposal is that responsible access will

be delivered by the Countryside Code. Therefore, the NUFS & SLF must ensure that **all** their members are circulated with the code in **draft form**. Furthermore, it would also suggest that a code to link responsible behaviour and the provision of access should not be confined to the Countryside on its own. It must take into account the behaviour in towns and link the two into one common purpose. It should therefore be called the Town & Countryside Code. The code should also state that the overriding principle of responsible behaviour means taking into account the operational needs, the privacy and safety as well as the conservation policies of land managers.

7. Local Authorities

Local authorities must in the interests of fairness ensure that all farms or holdings are treated in an equal way; to ensure that no single farm has the burden of all the access routes especially when it is adjacent or near to settlements. When several farms march with, or are near settlements, then all those farms and all their woods should accept an equal share. This may mean that some existing paths may close and new paths be created. Sometimes a farm(s) with a variety of crops and amenity features is alongside another which is solely under arable, so clearly one may be more attractive to walk on than the other. Therefore, a balanced and fair distribution of access and signed routes should be a mandatory objective, before implementing access policies.

REASONS

As farms, close to towns and villages, will be subjected to the greatest demand for access, local authorities must be legally obliged to act responsibly and fairly by not targeting access routes onto single farms and or holdings. All holdings should have an equal share of path network. Therefore, they must liaise with land managers prior to implementing proposals for paths and tracks to be signed or included in local plans and erecting such signs as the provision for a fair consultative procedure is not part of existing text.

This should be done:

1.
 - because the provision for fair arbitration is not part of the existing text.
 - because many conservation areas are privately managed and may not be on record.
 - because public records of areas which require protection are incomplete.
2.
 - to ensure the safety, privacy and security of isolated rural communities.
 - to ensure that viable farming businesses remain a key part of Scotland's great farming heritage.
 - to ensure that conservation, whether part of official schemes or as part of PFI (privately funded initiative) is given the safeguards that it requires (from access degradation), so that the management policies are effective and therefore sustainable.
3.
 - so the definitions (already outlined) can be added to the text.
 - so the Forums Advice mirrors SNH overriding guidelines.
 - so that land managers can accept access without breaking their legal undertakings.
 - to ensure continuity and long term viability for management operations with regard to farming and forestry and conservation.
4.
 - so that land managers operations are in compliance with all aspects of risk assessments, liability, risk management, insurance when access routes, whether signed or not are associated with their land.
 - because compliance must cover all types of access user, whether legal or not.
5.
 - so land managers have a fair representation.
 - so the employees and their families livelihoods are not at risk.
 - so that the extended farm communities, (that is the Residents on farms, but not employed there) enjoy long-term security, as well as social justice.
6.
 - so that all land managers have an opportunity to be consulted by their representatives on the SLF and NFUS.

- so that the Countryside Code has a truly wide endorsement.
 - because it is on land managers holdings that access will be exercised.
 - so that there is no confusion in law for land managers and people enjoying access as to when the code is applicable.
 - so that there is no opportunity to deliberately claim that they were not in the countryside, because a definition of the countryside is difficult to uphold.
 - so that people in urban areas and towns are under the same rules of behaviour and responsibility as those in the countryside.
 - because it will be the land managers who deliver the access over their land, they should see a copy of the code in draft form, so that they can make representations to the SLF or NFUS.
7. • so that farm communities, because of their location near to urban settlements, are **not** subjected to anti-social activities.
- so that farms, where previously there were few paths because of their cropping regime, or because they created few amenity features or woodlands, should be obliged to cooperate and create new paths.
 - to maintain the value of land in a balanced way.
 - so that woodlands are not the target for creating access, simply because it appears at first sight an easier option.
 - so that woodlands and paths around arable fields are given an equal weighting when creating access and new paths.

SUMMARY

The SNH and the Access Forum have published recommendations and guidelines for the basis of new legislation to deliver their vision of increased access in the Countryside, although the question must be asked why the Government have said that access for increased recreation is so desirable on farm and open land when at the same time they are selling off land used for recreation and sports in urban areas in England and in Scotland, therefore putting recreation low on their list of priorities.

As this subject is so complicated, it has required a lengthy response. I hope that by identifying ways in which the publication needs further work and amendment and bringing this information to the attention of the SLF, NFUS and the RSPB, that it will help these organisations to put the case of Scotland's farming community in future negotiation and debate on the subject of access.

They must ensure that:

1. Scottish farmers' legitimate concerns and their legal undertakings under IACS are integrated into future legislation.
2. Amendments and additions to the list of restrictions covering access are included into future legislation.
3. The special concerns highlighted in this paper of livestock and mixed arable farmers are hammered home to Government and the Access Forum.
4. SNH and the RSPB have built a good relationship with land managers. SNH and the Scottish Parliament have a duty to ensure that the present excellent position is not put at risk as a result of SNH advice on access as part of land reform.
5. Sustainable and viable agriculture, forestry and conservation continue to be a key part of Scotland's heritage and that this fundamental and overriding consideration must not be at risk because of increased access requirements.

so that:

1. Scotland land managers whilst welcoming increased access, know that legislation is in place to secure their confidence that both government and local authorities are committed to policies which will deliver sustainable agriculture, farm forestry and farm conservation.
2. Scotland's farmers are not burdened, for reasons caused by access in ways that their competitors are not, unless compensated for, and all constraints on freedom regarding landowners are adequately compensated for under the laws of the ECHR (European Court of Human Rights).

REFERENCE

1. Access to the Countryside for Open Air Recreation. Scottish Natural Heritage's advice to Government.
Available from SNH Battleby, Perth or Edinburgh.

APPENDIX 1

Andrew Mylius farms an arable & livestock holding in North East Fife.

The overriding objective of the farm since 1960 has been to combine a viable arable and pedigree cattle and sheep enterprise with major environmental and conservation strategies.

The policy has been to maintain the existing mature woodlands and enhance the holding with several major new plantations and other habitat features. In addition a feature over that period of time has been to hold a number of country sport activities and demonstrations. These range from carriage driving events, open farm days and walks, equestrian events, cross country running, scouts and girl guide camps. On average about 5000 people visit the farm each year as part of an organised activity. Andrew Mylius was awarded for his effort in combining good forestry in harmony with the environment by the Royal Highland Agricultural Society in 1988. He was also commended by the RSPB for integrating agricultural practices with conservation for birds on farmland.

The farms enterprises are herds of Pedigree AA and LR cattle and a flock of North Country Cheviot sheep; whilst wheat, barley peas, beans carrots and potatoes are grown on the arable land. The suckler cow herd is housed inside in winter, and runs outdoors on the 150 ha of grassland in the summer. The farm employs 3 men and 2 woman. Several houses and cottages are let giving a total resident farm community of 27 adults and 8 children.

The farm is situated near an urban settlement and has a number of tracks and paths used by the public. Whilst generally welcoming the public, the list of criminal and unacceptable behaviour is increasing to a worrying level. The list of illegal activities on page 19 have all been experienced. In addition there are other regular

infringements of the law with vehicles on farm land and in woodland, such as groups of mountain cyclists even at night, motorcyclists and cars. All these are either involved in some criminal behaviour or simply destroying habitats. As an example of the severity of the situation I have called the police to help or advised them of various incidents at least 8 times in 1999. They have advised me to lock gates on access routes and put locks in place where there have not been ones before.

APPENDIX 2

A police officer has written that

"Police do have a power of arrest for those who refuse to give their name or address but the reason littering is not pursued is that the effort or cost of securing a conviction is out of all proportion to the work involved. Having collected and properly stored the evidence i.e. the litter, I would then write a full account of it in a statement and assemble all the required paperwork into a file, by which time two hours would have passed. The Crown prosecution Service would then decide if it was in the public interest to pursue the case. If it decided to prosecute, the offender, after a time consuming hearing, would almost certainly be given a small fine (irrespective of the maximum sentence available). The system is simply not cost effective. With the public clamouring for increased detection and prevention of crime and with pressure from the Home Office for continually improving crime statistics and value for money, the Police have to prioritise their workload and manage limited resources."

Fife's Chief Constable, John Hamilton will take concerns expressed regarding perceived failure to follow through prosecutions against owners of dogs who foul public places to the regions procurator fiscal and a lead in calling badly behaved dogs and their owners to heel is being taken by Fife Council. It has launched a dog control strategy to help ensure that Fife's favourite pet remains man's best friend. The strategy, approved by the Councils public protection and regulation committee yesterday, was drawn up by a special working group comprising officers from the Councils environmental health and waste management housing and local office services and the police.

It was developed through consultation with welfare groups, vets, locality managers, community councils and councillors. Concerns raised during the consultation included dog fouling and raising awareness of the availability of free poop scoop bags, more doggy waste bins and a neutering scheme for stray dogs. The strategy will focus on the key action points of enforcement against dog fouling in which COSLA is currently looking into tougher laws and the environmental health service and police are also looking at poop patrols with dog wardens acting as witnesses. There will be a provision of 150 extra doggy bins across Fife at a cost of £22,000 and linking with the Scottish Office and COSLA to promote responsible dog ownership through national campaigns. There will be a scheme offering anyone who homes a stray picked up by the Council's dog warden service a £40 voucher towards neutering. The Council is currently looking into how the £28,000 per year cost of this service could be met. The Chief Constable recognised it was a serious public nuisance and a health hazard and took up a lot of police time answering 999 calls. However, he added:

"I am not against high profile campaigns but the biggest deterrent would be successful prosecutions in court."

Comment: It is clear from both these quotations that prosecutions are not often sought and very seldom brought to Court.

It is also clear that dog fouling is now widely accepted as being a potentially serious risk to human health. Dog fouling on all farms as well as farm land and woodlands should also be recognised as having the same risk as in towns and other public places especially near where livestock are grazing, or on crops for human consumption presents a potentially very serious risk to public health. This risk would also apply to a farm's human residents. The problem for land managers will arise and may even be intensified as dog owners are likely to take their dogs out of towns and public places to exercise them and seek rural farmland and woodland for exercising. The financial resources for addressing this is unlikely to stretch to farmers and land managers.



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