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LAND REFORM BILL & SCOTTISH OUTDOOR ACCESS CODE

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Dear Sirs

1. INTRODUCTION AND BACKGROUND

I own Easter Bavelaw Farm, which is an enclosed farm, situated in the Pentland Hills Regional Park (PHRP) I store within the farm (free of charge) all of the equipment used for the Balerno Childrens Gala. I store within the farm (free of charge) the Balerno Threipmuir Reservoir Fishing Club boats etc. I am a member of the Balerno Community Council.

I have previously submitted comments and objections to the Land Reform proposals on the 18 November 1998, 2 September 1999, 20 June 2001, 21 December 2001, and the 7 February 2002

I am concerned that many of my points were not reasonably taken into consideration. The Bill was not reasonably examined by the Committees, or reasonably debated in the Scottish Parliament. I believe that my property may be one of the worst affected by the Land Reform Bill regarding access. It is possible that the Bill and Code may have little effect in some areas of Scotland, but it will have a serious effect in other parts such as my farm. We already have within the PHRP a core network of Right of Way paths, I therefore fail to see any good reason for this Access Bill and Code being applied to my farm.

The proposals appear to be diminishing or extinguishing my rights of ownership, and introducing nationalisation of land through the back door. I can remember the farm having private keep out signs for the last 30 years, I have continued with this practice since taking ownership in 1991. These proposals should not force me to remove these signs or allow access into my enclosed privately owned farm.

I also believe that my rights will be badly effected by the Bill and Code, I am therefore opposed to your access proposals, **as they may turn my property into a public park**. I also note that in some areas, these radical proposals appear to contravene the **European Convention of Human Rights** and **Natural Justice**.

ECHR, it appears that the Bill & Access Code contavines my rights to privacy and the peaceful enjoyment of my possessions. I am also entitled to the rights of exclusive ownership, i.e. no one else can use my possessions without my permission.

Bio Security, the advice from government departments, is that farms should not encourage visitors, this is contradicting the Bill & Code. The Bill and Code should therefore be radically changed to accommodate the advise regarding Bio Security.

Liability, are the authorities going to accept liability for any damage or injury to any person or property including the farmowner and farm property, due to the public having access to privately owned land, surely the landowner cannot be held liable and any claims by the landowner or any other person must be made against the authorities, as it is they who are responsible for giving the public a right of access to privately owned property.

property, whether they have worked for it or not. The proposals appear to be opening the gates to remove the rights of an individual, or business to manage or own any property, in this case the target is simply rural properties. Your proposals are clearly giving out the wrong signals to many in the International and British Business Community, there is a very real danger of many reducing future investments in Scotland, they may now prefer to invest in a country with a better track record regarding ownership of property, I am surprised the Scottish Executive is endangering confidence in any part of the Scottish economy. I have certainly now noted a number of significant moves by companies now reducing their Scottish exposure.

I AM A FARM OWNER, WHO ALSO GOES WALKING AND CYCLING, my farm would probably be amongst the worst effected by your access bill, I therefore must object to your bill, as it is removing the actual rights of a land manager to manage the land and it is giving those rights to the Local Authorities. **Your Bill and Code is simply unmanageable on the ground, and has all the ingredients for a costly and bureaucratic time wasting mess, it will only make matters worse and increase conflict between all the parties concerned.**

EASTER BAVELAW FARM. My farm is approximately 450 acres, which is a medium sized farm. It has three miles of dry stane dykes and fifteen miles of other fencing, which enclose and criss-cross over my farm and fields. The farm has land on both sides of Threipmuir Reservoir, the farm is also surrounded by paths used as rights of way, including a path which also runs through the south side of my farm, I understand this is the busiest used path going through the Pentland Hills, The PHRP has in excess of one million visitors per annum.

PENTLAND HILLS REGIONAL PARK (PHRP). Unfortunately my farm is situated within the boundary of the Pentland Hills Regional Park, which since the creation of the park has become a very busy and troublesome area, the PHRP has in excess of one million visitors per annum. I have experienced substantial problems in trying to manage my land, and **unfortunately there are an increasing number of people visiting the countryside who have little or no respect for land management or other people's property.** I am very concerned about the amount of walkers, dogs, cyclists, and horse riders etc. who will believe they are free to stray off the rights of way paths in the area of my farm, and then decide to wander all over the farm. Such actions will cause considerable damage and management difficulties for the land manager, who will be unable to manage the access and should the manager attempt to manage the access then the manager will be committing an offence according to the Bill.

PHRP MANAGEMENT. To add to the problems the park management have over the years encouraged more visitors to the area. They have also placed a public car park near my farm entrance, it has encouraged a lot of lurking around particularly when it is dark, It has brought with it a lot of rubbish dumping, damage to my fences and gates, and crime including breaking into cars by some involved in drugs. It has added to my difficulties and when the car park is full, they park on my access road and block it off. The park rangers have also in the past been banned from my farm because of the difficulties they have caused my farm over the years, one example was when they were removing large stones from my dykes to make path drains. I understand from the Park management that there is in excess of one million visitors to the Park per annum. **I am pleased to say that the Park management and rangers do now appear to appreciate the farms difficulties and I believe they are now trying to help.**

PHRP MANAGEMENT AGAINST THE ACCESS PROPOSALS. I also note that on the 30-7-98 the Pentland Hills Regional Park Management, also submitted written comments on the SNH access proposals they appeared to be against them, they stated, **"It seems clear that increasing numbers of visits to land not primarily designated for recreational purposes will lead to a raised level of concern amongst landowners and land managers, and increase the likelihood of confrontations and claims that legitimate economic activity is being curtailed."** **"It seems unlikely that this could ever be acceptable in an area as heavily visited as the Pentland Hills, and a move towards free and unhindered access as a right would run the risk of shifting the balance too far away from the responsibility of the visitor"** "The Access Concordat is of great value and should be built upon, rather than being swept away, by any new legislation."

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EXISTING RIGHTS OF WAY. I often exercise the existing core network of rights of way paths, which appears to work reasonably well for the majority of responsible people, when, they are walking or cycling in the countryside and hills. If someone asks me for permission to camp on my farm or use my land for any other purpose, I will normally make an arrangement for them to do so, this may include payment. I also explain this to those who trespass over my farm and advise them of the Rights of Way routes to use, to avoid causing any more damage or disturbing the area, including my privacy and those who may have paid to be on my land, and

night. We have also had reason to ban certain people from our farm property, the proposals must not now give them rights to have access on my privately owned land. Many cause damage and management difficulties, also leaving a variety of disgusting rubbish behind them. If they are asked to please leave my property and stick to the rights of way, they will often argue and become extremely rude and simply tell you to ---- off, there have been occasion's when we have been threatened, attacked and assaulted. As a result of such problems, we have on the rare occasions, exercised our right to remove persons from the farm, using the minimal amount of force required to protect our selves and farm property from damage. **In remote area's it is not practical to ask the Local Authority, Access Forum or the police for assistance, as it could take a very long time for them to respond, we therefore do not normally report such incidents.**

TRESPASS ASSAULT, On the 5 January 1998, I also had trouble with some persons who could be described as animal rights activists or environmental terrorists, when I asked them to leave my farm they became verbally abusive and then punched me in the eye smashing my glasses the broken glass just missed my eye, but they did manage to break two of my fingers, fortunately my son in law was nearby and we advised the trespassers to stay where they are, as we were going to call in the police, they again became aggressive and said they were not going to wait for the police to arrive, we then ensured that they left the farm. We also telephoned the police but by the time they arrived the trespassers had long gone. We have good reason to believe that they and others have regularly continued to trespass on the farm in the hours of daylight and more worrying during darkness causing more damage etc. However I have taken steps to reduce these problems by encouraging people to keep off my farm, **I must therefore retain the right to manage and control access to any part of my property at all times. I do not believe the Local Authorities are capable of managing all of the likely problems that will happen as a result of the so-called responsible access, on my farm 24 hours per day.**

TRESPASS DAMAGE, I am greatly concerned at the amount of damage done to my property by the volume of trespassers in the park, some with dogs, which do attack the farm animals and wildlife. I could no longer effectively manage the farm and keep up with the levels of damage and contamination caused by trespasser's to my farm signs, fences, dykes, gates, buildings and private drinking water supply, as a result we have closed down the farm operation and keep it on a care and maintenance basis only, until such time as the problems associated with managing the farm within the Park could be sorted out, and I believed that we had sorted out most of the problems, unfortunately it appears that your Bill will simply make matters much worse.

TRESPASS CONTROL, **the park management** have recently agreed with my request to improve and alter the exiting route of Right of Way path which goes through the south side of my farm, the path is over a half mile long and has cost approximately **£28,000-** and it has greatly discouraged trespassers, the Park have also introduced some new route markers for the visitors to the Pentlands and it appears that these initiatives have reduced the problems. We have also over the last few years and mainly at the weekends, taken a more positive approach to control the trespasser's problems, if I see someone on the farm I know that they have no right to be there and can approach them and explain the importance of sticking to the rights of way and I am pleased to say we appeared to be greatly reducing them. **However your Bill & Code will simply make matter worse, I will then have many people on the farm and they will believe they have a right to be there, and if I were to attempt to manage the access, they would then believe that they will be able to make a complaint against me.** I would therefore be extremely disappointed to find that all of our work in this area was for nothing, and that my rights to own and manage my property was being diminished or extinguished.

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NEW SECURITY COSTS COMPENSATION. I alone look after my farm, but unfortunately I am in other full time employment away from the farm, that being the case can you please explain to me, how, I can possibly maintain a 24 hour farm security surveillance, 365 days per year, in order to control and check that the visiting public that you are giving access to my land, are exercising access responsibly. There are 168 hours in 7 day period, if I employ one person for 42 hour period I would therefore require 4 persons each week to maintain a 24 hour security, **the authorities must offer me compensation to cover these costs.**

LOCAL AUTHORITY'S. I must retain the right to manage the access and ask people to leave, this cannot be left to the local authority to control, as they do not have sufficient manpower or time to cover all of the security, management and safety problem's which may arise, particularly in remote countryside areas, it could very easily take them a considerable period of time to arrive. I also do not believe that they are the right people to get involved in the countryside access management problems on privately owned property. I have made a number of complaints regarding the rules applied within the park involving the Edinburgh Local Authority they ignored them. I was advised to make an official complaint against the Edinburgh Local Authority to the Ombudsman,

have little trust or confidence in their ability to be involved in any of your proposals involving my enclosed farm.

DEEDS, LAND VALUES, NEGATIVE EQUITY, COMPENSATION REQUIRED, LIABILITY. There is no mention in my deeds, which gives any rights to the public to be on my property, your Bill may in effect turn my private farm into a **public park**, without the authorities offering me any **compensation**. Your proposals are financially damaging, it will stop many potential buyers wishing to own and manage land, this will ultimately reduce the value of land, this could in effect also lead to bankruptcy for some, especially if their assets were now to become worth less than their debts, I believe there will be demands for compensation. Can you please also explain who is going to be held **liable** for any injury or damage to persons or property as a result of the authorities giving the public access to my private property?

ACCESS RIGHTS SHOULD NOT APPLY TO ENCLOSED FARMS. It would appear that your Bill & Code will allow the public to use private property for almost any purpose and that the land manager may not be able to manage how the property is being used. The land manager must retain the right to ask people to keep to the rights of way and not to trespass on enclosed farm property, even if there are no apparent crops or stock in the fields or the field margins, **the field and its margins will probably be an area of conflict.** The Bill is unworkable on the ground, it could very easily make a difficult situation worse, such changes could effectively make it very difficult for land managers to ask people to leave and as a result make it very difficult to manage the security and safety of crops, stock, buildings, dykes, fences, gates, land and those people using it.

MANAGEMENT, PRIVACY, SAFETY AND SECURITY, MUST NOT BE PLACED INTO JEOPARDY. We must retain the right to manage our property, privacy, safety and security, and it must not be placed into jeopardy by placing it under the control of the Local Authority, whether it is during daylight or more worrying during darkness. It is very important for any residential or business property, whether it be a government property, factory, office, shops, hotels, restaurants, public houses, area's used for sport, golf, fishing, shooting, archery or any kind of management including farming, to be able at all times to manage its own security etc. and that we must be able to ask those who have no right to be there to leave or they will be removed, just like any other business or property. However there may be a case for some additional safeguards to protect the security, safety and privacy rights of farm owners, land managers, staff and workers many of whom are often living and working in remote area's.

REMOVAL, BANNING of THOSE WHO HAVE CAUSED TROUBLE and COURT ORDERS. We must retain the right to ask people to leave or they will be removed, or banned particularly those who we suspect or believe are likely to leave gates open, climb over dykes, fences and gates, cause damage, break into and steal from the farm houses, buildings etc. suspected poachers, or anyone suspected of doing anything else wrong on the farm.

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Land Reform (Scotland) Bill & Code

ACCESS CODE

I am concerned regarding access rights to enclosed farms, I do not believe it is responsible to allow this, I am opposed to this happening and therefore my comments are brief regarding the actual code.

1 Access rights - Should not apply to enclosed farms, its buildings, fields or field margins. It is not always apparent if there is stock or crops growing in the fields or field margins, or if spraying with pesticides etc. is or has recently taken place, or if there is some form of vermin control or shooting taking place.

2 Access rights - Land managers must retain the right to order trespassers to leave, in order to protect the Privacy, Bio-security, property, fields and field margins, these are likely to be areas of most conflict. It is also important that not only the people who may live on the farm have privacy etc. but also the owners, their guests and any employees.

3 Access rights - Should not apply to private enclosed farms, except through existing rights of way.

4 Access rights - Should not apply to water, especially if there is already private boat fishing rights in place.

5 Local access forums – should not apply to enclosed farms etc.

Conclusion

The Bill and Code is over complicated and unmanageable on the ground, it needs to be given a lot more careful consideration, it could be reasonably argued that it has not addressed many concerns raised during the

matters worse, they would also lead to the reduction in those who would have invested in land, this will obviously be detrimental to the value of Scottish land.

Discussions with access users, over the last twelve years I have attended local access meetings and have had many discussions with walkers etc. and I am genuinely interested to find out what do they actually want, and it appears that the vast majority are reasonably happy with the present arrangements of a sign posted, core network of right of way paths, horse riders also would like to enjoy that access. When I come into contact with persons who are trespassing on my farm, I normally enter into a discussion with them, I explain the reasons why they should stick to the Rights of Way and I find that the vast majority actually agree, and appear to now stick to the new path.

Compensation If this Access Bill is passed then you should include plans for adequate compensation and in particular to purchase farms, which may be in the worst effected areas, i.e. including my farm, I could then get out of land management or buy a property in another area where this access Bill will have little or no effect.

Alternatives – Access to enclosed farms should only be considered along a network of right of way core paths. If there is no network of these paths, then agreements should be reached to create them in suitable areas of the countryside, not going through the farm but around the farm boundaries, where suitable and agreeable, the paths should be of sufficient width to accommodate walkers, cyclists, horses and possibly path maintenance vehicles, with fences, gates and styles erected and properly way marked with directions. On large estates a more open network of paths could apply in suitable sections, perhaps the paths surrounding every 1000 acres within the estate. This alternative would appear to offer reasonable privacy for everyone involved in land management and good access. There should also be agreements for locating clearly marked camping spots every few miles along the paths.

I trust you will take my comments and alternatives into consideration, I look forward to hearing from you in due course.

Yours sincerely

Kenneth Mitchell Shade