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Reply to Consultation Paper on Access Agreement

Before proceeding to the advice, there are one or two fundamentals; the word "responsible" or "responsibly" appears time after time (I can find it at least seven times on the first page). There are obviously varying views on what an individual calls "responsible". Certainly the draft code does go some way to explain what is considered "responsible" but there is no definition thereof. One has to remember that large numbers of those people taking access have substantial ignorance as to the complex requirements of "good land use".

It would surprise many, at how many people are "irresponsible" in the countryside, and there is little or no means of enforcing responsibilities on those using access. As an instance I remember being with estate employees repairing a hill road, that an obviously experienced hill walker stomped past us; never made any greeting or queried whether he should proceed. It happens that the road was flooded, and he could only continue another two or three miles (unless he swam). A short time after he left, one of the estate workers noticed the "washes" of three animals in the loch, this was "spied" and found to be a hind, calf and follower. Of course in July the calf would have been at best a few weeks old, but they had to swim across the loch to get out of the way of the hill walker. After such a long swim in the very cold water, it is doubtful if the calf survived. When the man returned, we pointed out to him what he had done, he was most abusive and reported us to every organisation he could think of, including the police. Not surprisingly none of them paid any attention, but this is the sort of occurrence which we feel is likely to increase in spite of your good advice.

Without even the freedom given by the 2003 Act a pair of Ospreys trying to nest on the estate were disturbed from three different nesting sites. There is no doubt that birds and animals, which we have tried to protect, such as "capercalzie" will suffer greatly from this Act.

England has appreciated the damage which will be caused by this Act, and their Access Code Legislation is markedly more friendly to the countryside.

There are so many points of doubt and indeed in some places controversy between the proposed Access Code and the Act.

To go through your document:

Key Principles

Most people want to act "responsibly" but I am afraid that this still leaves large numbers of people who are "irresponsible" or "militant" or possibly only "ignorant". I give an instance, which occurred during the foot and mouth period as you mention it; we used to feed our deer

during winter on an old road near the lodge. While the stalker was actually feeding the deer, a "young man" appeared and was challenged by the stalker. It was pointed out to the walker that by walking through the deer feed he could well be spreading the disease, and should it get into the deer population there would be serious problems. The man was very hostile, and said no one was going to stop him, and in spite of the warning he walked right through the feed on the road. Even in an extreme case like this, there is virtually no method by which the stalker could deal with him; the stalker had indulged in polite requests to be answered with hostility. There is no method by which the walkers name and address could be secured, and even if there had been, the Fiscal would not have taken action. I note that the concerns and fears to deal with this anti-social behaviour, have been considered, but no redress has been given to the manager who encounters this sort of thing. I am afraid there is a misconception, which states that problems on the ground are rarely significant. The misconception has arisen because it is not worth reporting the many incidents, which do occur. Your paragraph, which states "have a care for people who are enjoying the outdoors, and do not hinder the people that earn a living from the land" is a good paragraph, and should receive prominence. Your introduction states "failure to comply with the Code, is not of itself an offence" I regret this sentence, as those who are difficult will just use this to do what they want.

5.1 shows problems which are a considerable worry, but all too true. There are so many doubtful points that one can foresee the courts being busy. On the other hand many cases will be debarred, not only by the expense of going to court, but by the hassle of being involved. A typical example of the above is the definition of curtilages.

Camping is another worry; we have had many cases of this, which frequently involves lighting a fire, and leaving behind a mess. One summer evening we had a drinks party, and looking out of the window we saw a tent pitched on the "lawn" it turned out to be (though this is not significant) a Dutch man.

You give some considerable clearance on grass fields, which may be in order for walking, but to have someone camping on your best young grass is not helpful.

It is good to see that you make it quite clear as to the use which is permitted on a golf course, but there is nothing to give similar protection to a days shooting, and there is considerable concern that there would be no deterrent. Indeed, it may be within their rights for "anti's" to interfere with a days grouse shooting. I am pleased to note that access to dams is specifically forbidden. We have our own hydro scheme here on the estate, and on a number of occasions we have had wilful destruction, such as throwing stones onto the valve housing, and access pipes.

Clause 6. Specifically debars rights to fishing, but recent legislation (at present before Parliament) removed the safeguard, which had been in the Bill, which would have protected fishing. It is forbidden to disturb wild birds, animals and plants, but there is no method of enforcing this. The lighting of fires was forbidden by an Act of Parliament at the end of 19th century, probably as a restraint on the "tinkers" camping. The proposals laid down must inevitably open the road for "new age travellers".

I think you have had a number of representations from individuals using ones land for commercial activities, this is very strongly disapproved of. There was one instructor who regularly used to take parties canoeing and hill walking, he specifically instructed his pupils not to take any heed of any representations made by land managers. You enquire regarding the guidance on making the countryside hazard free; I think it should be made quite clear that access taken on to any ground without permission should be entirely at the persons own risk. I can

remember trying to get the Inverness County Council to give us "an access agreement" and they refused because they were worried as to the liability, which the Council might incur from injuries, arising from the ground over which the access was taking place. If this was the worry of the Council it should clearly be a substantial worry to any landowner.

The wording of 3.12 is of concern. If one has a drive leading up to a house through part of your garden, this would appear to give anyone a right to use this road.

3.20 land managers must be able to conduct a wide range of managerial operations. How will this be defined? For instance, a great many wild birds will inevitably be interfered with by access.

3.21 we are already plagued by people who leave gates open (and indeed, when they close gates, which are meant to be open) we often have to go looking for our cattle, which have been let out. The BHS in its journal describe a case where the owner of horses, which had escaped from a field (through no fault of the owner) onto a highway, the owner of the horses, was found guilty and of course liable for substantial damages. The same could of course occur with cattle.

3.22/23 it is not easy to put up signs in the countryside, not only is it expensive, but it is unsightly; notices are frequently subject to vandalism. One of our signs was recovered one mile out to sea, having been thrown in the river!

3.28 for sometime now the Game Conservancy has been advocating that farmers should leave wide field margins, not only for cover, but also for nesting birds. Your recommendations are that walkers should use the field margins.

3.32 too much emphasis has in the past been placed on disturbing peoples stalking. What is probably more important is to prevent people driving deer out of sheltered places in stormy weather, particularly when the hinds are calving, and also in severe weather in the winter when food and shelter is scarce.

3.37 the wording "dogs under proper control" is far from adequate. People allow their dogs to run at large in many places. This can cause a great deal of disturbance to wildlife. It is really vital if they are going to use someone's property without permission that the dogs are on a lead. At the end of this paragraph you do refer to dogs being on leads, this is particularly vital during the nesting season.

Having looked after Highland estates for approximately sixty years, I can think of a number of other points, which I might make. The Code is very much of a "curates egg" good in parts, bad in others. I think it is significant that the new law in England is not nearly as hard on the landowner as that proposed in Scotland. I think if there is to be good land management, then we should be leaning towards what they have legislated for in England.

Yours sincerely,

The Lord Burton