

**RESPONSE to  
Consultation on  
Draft Scottish Outdoor Access Code.**

Bridget Dales  
Recreation & Access Group  
Scottish Natural Heritage  
Battleby. Redgorton  
Perth. PH1 3EW

Andrew Mylius  
St Fort Farm  
Newport on Tay  
Fife. DD6 8RE  
Tel 01382 541587

1st June 2003

**GENERAL ISSUES**

The draft code asks 4 questions on page 63. Does the code provide -- ?

- \* an acceptable reference point on access rights & responsibilities
- \* a balanced outcome in terms of responsibilities on both land managers and users or access takers.
- \* clear, sensible and helpful practical guidance on access rights & responsibilities that you can use to make informed decisions about everyday situations in the outdoors.
- \* Is the code written in a way which reflects the spirit of the legislation.

**Response:**

- \* It is clear that considering the legislation, a code is required as a reference point and SNH have delivered a draft code. I believe the code is essential to delivering purpose of the Bill and at the same time safeguarding the legitimate needs of land managers, safeguarding wildlife and safeguarding the environment.
- \* I believe the code attempts to be balanced but in fact fails on several points which I will deal with later in this response.
- \* Again an attempt has been made in the draft to provide guidance, but once more some of the advice is not sensible, is not practical and needs further ammendment.
- \* As I have not read in detail the exact wording of the Bill I cannot comment on whether the draft code reflects the spirit of the Bill.

My response is based on both my location and occupation, as well as my 40 years experience as a landmanager, farmer / forester.

St Fort Farm is situated in North East Fife close to Newport on Tay. I am an owner-occupier and employ 3 full time workers who live with their families on the farm, plus two part time workers.

St Fort farm has two closed pedigree herds of Suckler Cows (Aberdeen Angus & Lincoln Red) a flock of 350 breeding Ewes and grows a variety of cereals and various vegetables for both human and animal consumption. A number of outdoor events are held here mostly for equestrian competitions, but also cross country running and scout camps etc. The Farm has invested in various facilities for equestrian liveries.

I have won two major awards for amenity, forestry and conservation in the last 15 years. I am a member of Fife Council,s Access Forum.

## **General Response**

### **Question two-on *balanced rights and responsibilities.***

The current draft must be ammended because the overarching thrust of the Access Codes text (in detail) will make the following activities more difficult or even impossible to achieve. Much of the current draft will also adversely effect the economic viability with regard to the following headings.

- \* **Sustainable livestock farming, especially near urban settlements.**
- \* **The maintainance and preservation of wildlife habitats.**
- \* **Improvement of biodiversity.**
- \* **Compliance by farmers with existing IACS and other stewardships schemes.**
- \* **Biosecurity on farms. Human and Animal health**
- \* **Safety and privacy for farm dwellers and their families.**

Why are these six headings so important ? *and*

Can these six topics be addressed in ways which allows them to be successfully covered so that the access Bill can deliver its purpose whilst at the same time delivering access to everyone in a *sensible* way ?

The third question SNH ask is about *sensible* guidance, ---- is it clear, helpful and practical ? So the key to the Access Code being both workable and acceptable is the word *sensible*.

Practical advice is usually balanced advice and some parts of the code **fall short** on these points. Practical advice is also usually acceptable to most people, including access providers and access takers.

Why are the six principles (above) so important. I could write at great length on these six headings, but SNH are aware of the importance of farming and livestock production to the Scottish economy, they are aware of the importance of Wildlife habitat, and they are aware that current IACS schemes and rules must be brought into line with legislation on access through the code. SNH is also aware of the current concern with animal biosecurity and the risks to human health and safety.

SNH should also be aware that farms and farm dwellings pose different questions on safety and privacy because of their locations. What may be sensible advice on a remote hillside visited by long distance walkers, will require different advice on a lowland livestock/arable farm near to an urban settlement where the visitors are mostly dog walkers.

In short the code can be ammended to deliver satisfactory solutions to the six key points, by offering practical and sensible ways to guide the public when in the Countryside.

It is unfortunate that the Code makes no attempt to offer different solutions to upland and lowland access. I am sure that SNH is aware that most of the problems from a Landmanagers point of view stem from lowland farmland, and especially farmland near urban settelments.

My view is that SNH should even at this stage, find slightly different solutions for these two main types of countryside. SNH MUST make an effort to go down this route if the Access Code is to be adhered to by both providers and takers.

Failing a will to attempt to go down this route, it may be that Councils may be able to offer a way to forward. I am aware that from my experience with Fife Councils Access Forum, that they have an understanding of some of the problems that relate to Fife,s predominantly lowland farms.

**From a farming perspective what are the key issues that require ammendment, or attention in the final draft of the Access Code.**

- \* A definition of responsible behaviour that safeguards Farmers and Growers interests.
- \* The Code must not increase Landmanagers liability.
- \* The Code must seperate people from Farm Animals and farm crops especially on enclosed grassland; ( fenced fields and walls/hedges around fields - at all times)
- \* The Code must exclude people from taking access on (enclosed) field margins such as headlands or endrigs or grass margins, unless specifically allocated for general access.
- \* The Code must reflect the stringent necessaty for increased demands of bio-security from the health & Safety executive, SEERAD and end users such as product purchasers.

- \* The Code must be amended to stop all access both within the curtilage of and also on/in the water itself on man-made ponds & reservoirs/lagoons etc. As these are often used for irrigation of crops for human or animal feed consumption: so as to safeguard the quality of water.
- \* The Code must be amended to encourage the diversion of all footpaths or riding routes etc around farmyards, irrespective of whether they are rights of way or not.
- \* The Code should make it irresponsible to be taking nighttime access on lowlands.
- \* The code should make it irresponsible to climb stone walls/dykes and farm fences at anytime. (After all farm staff do not climb their own walls or fences because of the weakening and destructive effect it has on these structures, which are there as part of our heritage and or to enclose livestock; and maintained at the farmers expense).

**From a Wildlife and Habitat perspective; The Code needs to be amended so that:-**

- \* The Principles set out in the code ì show extra care for wildlife and historic placesî (for example) need to be in line or agreement with other texts; for example it says page 22 that ìdisturbing wild birds and animals is a criminal offence.
- \* The Code gives more effective protection to wildlife habitats, especially on:
  - Enclosed farm land.**
  - Small plantations/farmwoodlands and wind breaks.**
  - Rough ground on lowland farms**
  - Small (1.5 hectares or less) water features, such as reservoirs, lagoons, man-made ponds and private fisheries.**

*Epecially when such areas have no protection from existing policies, eg SSSI,s*

**Land Management/farming/forestry and growing.**

The Code is not helpful in a number of way to these activities.

The Code must be amended so that :-

- \* It is easier for landmanagers to discuss exemptions/ re-routing and other aspects of access directly with their local Council. The local Council should in turn not have to refer to Ministers, even for longer periods of exemption or even permanent exemption.

- \* Landmanagers must be able to notify the public, by putting up signs or by other means of their activities/warnings/recommendations regarding specific features, places, situations, events without being in any way in contravention of any part of the code.
- \* Landmanagers should be recommended to offer alternative routes so as to avoid farmyards, fields with livestock in them and special areas of conservation on their land. (these may be habitats under a scheme or simply created at the owners expense/management) Usually the effect of people on foot or horse and cycle is detrimental to safe nesting and wildlife retention.

### **Landmanagement and multi use of paths/routes.**

The code fails to offer solutions to the well understood problems of multi use of paths.

The attempts to deal with this tricky problem are not sensible or practical. SNH has accepted that universal multi use will present many difficulties on many occasions as well as in many situations. The difficulties are spread between access taker and access provider.

The overriding issue is whether a path or route or corepath is capable of multi use, and if not, how can this be assessed and can it be designated for specific use by one or more types of activity.

The code must give recommendation to both Councils, and Landmanagers to pursue the concept of grading and the public in turn would almost certainly be happy to concur with reasonable solutions.

At Fife Councils access forum we have discussed the merits and negative aspects of multi use and it is more or less agreed that some system of user identification is necessary. It would be helpful if the Access Code gave support to this concept.

What types of track are suitable for multi-use.? At present it can be summarised that a track which is wide enough, does not poach or become waterlogged, and well maintained meets the criteria. Such roads can be found on current public highways/minor roads/forestry commission standard tracks and a few others.

It is clear from historical records that highways/drove roads/ turnpikes etc were laid down to exacting standards from about 1780 onwards, simply so that they could take multi use traffic and stand up to the rigours of the weather.

The number of such routes in Scotland are limited, so it is obvious that an expansion of routes is required, if multi use is to be promoted. Clearly this requires considerable funds.

What is also certain that if multi use is promoted without the infrastructure in place then there will be problems for landmanagers and access takers.

It is worth my time to write more on this as it so important to get right. Take access for horse riders or even carriage driven horses. As an event organiser of long-distance riding, using farm tracks, field margins and roads, my experience tells me that in the summer months, about 120 horses is the maximum that most ground can take in a short time span, say 24 hours. That means that the ground can recover, by grass harrowing or rolling without reseeding or great expense. Once poached, due to over use, especially in wet conditions or in the winter, the damage may be unrepairable without major expense. From this very simple fact it is clear that the current proposals are **not** really workable and that whilst the Land Reform Bill may give horse riders a right of access, the responsible and therefore the recommended view should be rather different.

The solution lies in Landmanagers liaising closely with their Councils to establish not only where a route may be drawn up, but also when and what activity that route should cater for.

*To achieve this sensible way forward needs the Code to promote the structured concept of multi use where appropriate and separate use where catered for.*

### **Commercial Operations.**

It is not acceptable to me and I presume many other farmers/foresters that their property may be subjected to commercial activities. Activities that commercial operators will benefit from and could use facilities or features that I have paid for and maintained. I am not at all happy that someone who has not contributed to the creation of these facilities may use them for business gain. However -

The solution to this problem may be found in the identification of routes suitable for multi-use. In other words it may be reasonable that routes suitable for multi use could be the criteria required to be met before commercial use or activity can take place.

The logic to this solution lies in that : The routes suitable are probably already funded or will be funded by public funds, and will be maintained. These same routes are capable of taking the additional wear and tear that commercial activity would generate.

I believe that SNH have a duty to take into consideration the points made here. I believe the points are practical and sensible and therefore acceptable to both access takers and access providers.

I believe the Access Code could go further than it has attempted to do in the first draft by offering recommendations to those taking access. The concept of recommendation, especially in shorter edited versions of the Code, would be both positive and useful.

I am grateful for having the opportunity to have attended various road shows organised by SNH on access and now for having an opportunity for giving my written response.

Yours sincerely

Andrew Mylius.

