



26 June 2003

Bridget Dales  
Recreation & Access Group  
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Dear Bridget

**DRAFT SCOTTISH OUTDOOR ACCESS CODE: RICS SCOTLAND'S CONSULTATION RESPONSE**

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) has noted the above consultation paper and is grateful for the opportunity to participate in this debate.

RICS Scotland is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations. As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

Having considered this consultation document at length, the Royal Institution of Chartered Surveyors in Scotland wishes to make the following comments.

**General Comments**

One of the main observations RICS Scotland would like to make relates to the length of the document. It is long, complex and in places is poorly balanced. That said, RICS Scotland does appreciate that this is a difficult subject to define and overall we recognise that this document makes a reasonable attempt to clarify general access issues. That said, there are some further specific comments that we would like to make on this document.



The draft code refers to what people 'can' do. RICS Scotland is of the opinion that that it would enhance the code if the phrase 'can do' was to be replaced with what people 'may do'.

Dictionaries do not describe 'can do' as implying a legal right to do, whereas 'may do' does imply such a meaning.

The use of the word 'responsible' throughout the document is contradictory. What is 'responsible' access to one person is irresponsible to another. For example, a dog owner walking their dog may think that they are behaving responsibly, whilst a land manager may see the dog as threatening or worrying his stock. In turn, a cow with a calf may attack a dog – where does the responsibility lie then? The Code states that the land manager is acting irresponsibly when he/she leaves an animal, which is known to be dangerous in a field where there is a core path or public right of way. The proper rotation of fields may require a bull to be placed with cows and although dairy bulls are seldom in the open, it is not reasonable that the normal agricultural practices of an area are restricted.

The Code appears to have done little to limit the impact of access on conservation areas. There is no mention of the protection of habitat areas, in particular SSSIs and SACs.

Fire safety is mentioned in the draft code. However, we would like to stress the resultant dangers when accidental fires occur. Perhaps it would be a sensible option to restrict fires / portable barbeques to designated areas, therefore reducing the risk to both the individuals and the countryside.

RICS Scotland believes that the failure to restrict access to fields where there is young stock with their mothers to be a serious omission. A cow with a calf can be very dangerous, especially if a walker has a dog present. We would suggest that this issue be re-examined.

It is not clear what sort of vehicles disabled people may use under the Act. Is this just motorised wheelchairs, or would it extend to cars that have been adapted? The Code merely uses the form of words used in the Act. Clarity is sought on this issue.

## **General Issues**

### **1. Does the code provide an acceptable reference point on access rights and the responsibilities of users and land managers?**

RICS Scotland is of the opinion that its too early to judge whether or not the Code is an acceptable reference point or not. There may be a need to alter the Code due to practical reasons. In summary, we are of the opinion that the Code will have to be implemented and monitored before a final judgement can be made.

### **2. Does the Code provide a balanced outcome in terms of the responsibilities of both users and land managers under the legislation?**

No. RICS Scotland remains generally concerned that the onus of responsibility is greater for the land manager than it is for the user.



**3. Does the Code provide clear, sensible and helpful practical guidance on access rights and responsibilities that you can use to make informed decisions about everyday situations in the outdoors?**

The code makes a good attempt to provide clear and sensible guidance. However, the interpretation of the guidance will vary amongst users. The Code does not attempt to provide any guidance on how to resolve disputes.

**4. Is the code written in a way, which reflects the spirit of the legislation?**

Yes.

**Specific Issues**

**1. We would welcome any ideas on how we can balance the need to cover all key issues in sufficient detail with the length of the code.**

Covering all aspects in a sufficient and comprehensive manner is a daunting task. Perhaps a shortened guide to countryside access, which outlines all the relevant information but is easy to read and portable, would be a solution to this problem.

**2. We would welcome any ideas on what sort of short summary of the Code you would find useful and what its content should be.**

Summary information should include advice on suitable clothing, equipment and weather conditions. Information on access to enclosed land, core path networks, hill and open moor land including woodlands and water and coastal areas should be included. A short “Do’s and Don’ts” guide for access over sporting areas should also be included.

**Key principles**

**3. Do you find the key principles helpful in thinking about what responsible behaviour means?**

The key principles are helpful, however, Scottish Natural Heritage must ensure that these principles are clearly understood by those accessing the countryside.

**Section 1- Introduction**

**4. The role and status of the Code is determined by the Land Reform (Scotland) Act 2003. Do you think it is clearly explained in this introduction?**

In so far as this is possible, we agree.

**Section 2 – Summary of your access rights**

**5. The extent of access rights is determined by the Land Reform (Scotland) Act 2003. Do you think that this section of the Code summarise access rights accurately and is it the interpretation within the Code understandable and easy to follow?**

A more robust definition of the difference between ‘commercial use’ and ‘private use’ needs to be provided, particularly when describing what may and what may not be taken from the land. In addition to this, consideration should be given to the following definitions:

- Grassland – does not appear to include grass grown for seed or for turf.



- Exercising access in grass fields will be problematic as it is suggested that ankle height is too long to be accessed and it will be likely that it will be grown for hay or silage. There are some instances where grazing grass can be greater than ankle length and there is going to be great difficulty in interpreting what type of grass crop access has been taken in.
- Around the margins of fields where crops are grown – there is no provision for the protection of ground nesting birds.
- Encouraging individuals to take access along unsown ground within fields is irresponsible. This could lead to individuals walking down tramlines within the middle of crops.

Clearer advice on access where commercial gain is being made from an organised event would also be useful.

### **Section 3 – Exercising access rights responsibly**

**6. A key role of the Code is to show the point at which behaviour is or is not responsible. It is the test of responsible behaviour – unreasonable interference in the form of damage or disturbance causing harm or loss – set too low or too high, or is it about right?**

Taking responsibility for your own actions cannot be emphasised enough. Individuals must be responsible for their own actions and carry their own insurance.

**7. Do you think the guidance emphasises enough that the countryside cannot be made hazard-free and that people should be responsible for their own actions?**

In general terms yes. However, we would like to see this strengthened, with particular reference to access around farmyards. Farmyards are dangerous places and individuals should be encouraged to walk around a farmyard where possible. Increased liability for land managers is our foremost concern and it would be useful to clarify the position.

**8. Does the Code strike a sensible balance between the needs of the people exercising access rights and the need to give people reasonable measures of privacy and peace in their own home? If you think that the Code does not strike a sensible balance, please explain why?**

The paragraphs relating to privacy are accepted.

**9. If you think that reasonable needs for privacy can only be respected by keeping a certain distance from any house, what distance would you recommend and why?**

Agreed. The Code could go even further by giving examples of intensity of management (closely cut lawns, flower beds, trimmed hedges) and - proximity to the house and extent to which it is overlooked (where you are close enough to appear prominently when viewed from the windows of the house).

**10. Does the guidance strike a sensible and workable balance between the interests of those exercising access rights and those working farmyards?**



The Code should draw attention to the obligation placed on the land managers to provide a reasonable alternative route.

**11. Do you think that the guidance provided on access over land where land management work is under way is sensible and workable on the ground? If not, please explain why.**

This section is clear and provides relevant guidance. However, we would suggest that the danger of stored materials should be underlined.

**12. Do you think that the Code strikes the right balance between people being able to access rights responsibly and ensuring that any risks to animal health are minimised? If you do not, please explain why.**

Again, please refer to previous comments.

**13. Do you think that the guidance in the Code strikes a reasonable balance between people exercising access rights through fields and the interests of land managers? If you do not, please explain why.**

The Code fails to mention the crossing of boundaries. How will this be managed?

**14. The Code stresses the need to take care whilst enjoying the natural and cultural heritage. Do you think the guidance strikes a fair balance between protecting this resource and encouraging people to enjoy and appreciate it? If you do not think that the balance is fair, please explain why.**

Firmer and stronger guidance on key issues is required. The section on litter should be expanded.

**15. Dogs can be an emotive issue. The Code defines “under proper control” in several ways, including not taking dogs into some types of field. Do you think that the responsibilities placed on dog owners are about right? It would help us if you could let us know in your response if you own a dog.**

Allowing dogs to run free on a field margin or in an upland area will have a major detrimental impact on ground nesting birds. Ground nesting birds require peace and quiet and the introduction of dogs to these areas will cause birds to abandon their nests. This suggested practice is also directly in conflict with some agri-environment schemes. Dog owners should be encouraged to keep a dog on a lead in any well used area or where there is a potential threat to livestock and wild life.

**16. Do you think that the guidance for the organisers of groups and events, particularly the distinction between when to talk to land managers and when to obtain their permission, is reasonable? If you don't, please explain why.**

Yes. However, it cannot be stressed to strongly that organisers ensure that they have consulted land managers.



#### **Section 4 – Managing land and water responsibly for access**

**17. A key role of the Code is to show the point at which behaviour is or is not responsible. Is the test of responsible behaviour for land managers – people being prevented or discouraged from exercising access rights, or whether actions are unreasonable – set too low or too high, or is it about right?**

The wording seems reasonable.

**18. Do you think that the list of examples of what might be deemed an unreasonable obstruction is reasonable or too long, or would you like to suggest other examples?**

The list seems reasonable.

**19. Do you think that the guidance strikes the right balance between the obligations that land managers have under other laws, the obligations that they have under the Land Reform (Scotland) Act 2003 and the needs of people exercising access rights? If not, it would help us if you could explain where the balance is wrong and why.**

RICS Scotland is concerned about the proliferation of access signs that may appear in the countryside. However, we recognise the need to advise and inform. In addition to this, we query who will pay for the installation and maintenance of these signs?

**20. Do you think that the guidance provides sufficient encouragement and guidance for action by land managers to help people exercise access rights responsibly?**

On balance, RICS Scotland welcomes the Scottish Outdoor Access Code. However, we are firmly of the belief that the code will evolve over time. In order for the Code to be successful and to achieve a balance and a realistic access to the countryside for all users, SNH will have to ensure that its educational and promotional activities are accessible and understandable.

**21. Do you think that Section 5 provides clear, sensible and practicable guidance to those exercising access rights and to land managers? If you think it could be improved, please tell us in what way.**

There are likely to be many areas where it would be unsafe for a user to be, and where these sites have been assessed as a risk, they should be legitimately excluded.

Wild camping should be clarified. Swimming and boating should be specifically excluded from ponds stocked specifically as commercial fisheries. Access rights to such sites should be reviewed.

**23. Do you find the advice in Section 6 useful?**

In many cases, the Local Authorities will not be in a position to respond to all the issues, which are likely to be raised under the Act. There is some question as to their ability to meet obligations if the Scottish Executive does not make the financial commitment. In addition, Local Authorities work Monday – Friday, but the majority of recreational access will take place at weekends. It should be made clear that there will not be an immediate resolution to problems.



**24. Is the guidance for dealing with irresponsible behaviour sensible and realistic? If not, please say why.**

Depending on level of the dispute it may not be acceptable to ask a ranger to intervene in a dispute situation. This needs to be looked at carefully to ensure that expectations are realistic and workable.

On behalf of RICS Scotland, I hope that these comments are helpful. Please do not hesitate to contact me if you wish to discuss any point.

Kind regards

Yours sincerely

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