

Bridget Dales
Scottish Natural Heritage

Our Ref: DA/JS/1724

By Email : soac-consultation@snh.gov.uk

Date: 20th June 2003

Dear Ms Dales

**SAC CONSULTATION RESPONSE TO
Scottish Outdoor Access Code - June 03**

In connection with the above consultation please find below the views expressed from a range of responses from SAC staff throughout Scotland.

General Issues

“Does the Code provide a balanced outcome ...?”

In some respects – no. It needs to ensure throughout that where statements are applied to recreationalists these are strictly balanced by ones relating to land managers – this is not always the case e.g:

- 4.15 & 4.18 – equivalent statements regarding why problems exist and need for courtesy should be included in Section 3.
- - the 1st sentence should be followed by reference to the fact that Scotland’s outdoors are also places which are owned, managed and relied upon by many people to make their living.
- 2.5 – land management should not be referred to as if it is ‘tagged on’, and is secondary to recreational aspects – “It is also important....” -type statements give this impression and should be changed.

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“Does the Code provide clear/sensible & helpful practical advice?”

- Real concerns, over clarity and helpfulness, mainly based on the structure and format - the document is very confusing eg It is not clear what each section is about. Suggestions are:-
 - There needs to be a clearer delineation between sections (especially that the Code is found in Sections 3 & 4) and plainer language used for section titles -
 - eg Section 2 = ‘An outline of the access law’
Section 3 = ‘The Code – general guidance for recreationalists’
Section 4 = ‘The Code – general guidance for land managers’
Section 5 = ‘The Code – detailed guidance for specific activities’
 - The Contents page needs similar clarification
 - Generally the whole document would gain from greater use of sub-headings and bullet points.
 - Less use of narrative style.
 - ‘At a glance’ pages are not clear nor sufficiently delineated from rest of pages – would be improved by eg using different background page colour + a border; use of sub-headings.
 - Consideration should be given to developing the format in tandem with the format for the ‘short’ codes – a degree, at least, of standardisation between them would be useful for readers.

Producing a Short Summary of the Code

- 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 P11
 - The main emphasis of the Code as a priority should be the how the accessees need to ensure that they do not damage wildlife or habitats and that they should not cause problems for those who live and work in the countryside, similar to an updated more relevant Countryside Code.
 - This could be achieved by producing a series of specific use/land manager guides, which would be shorter but more relevant to users e.g. walkers, cyclists, horse riders, farmers, game keepers, forestry workers.
- 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. P12
 - Refer to above and
 - Either option b) or c) as outlined p12 [a) would be far too long]. Look to research into effectiveness of other behavioural codes to decide between these two.

Key Principles

3) Do you find these key principles helpful in thinking about what responsible behaviour means? P19

- ‘Show extra care to wildlife’ is a rather meaningless phrase, and therefore not very helpful
- There is no mention about care/respect of property.
- “Responsible Behaviour” is not defined and it is unclear what should be done in the event that a land manager thinks that access are behaving irresponsibly.

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? P21

- Yes this is reasonably accurate

A 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 summarises access rights accurately and is the interpretation within the Code understandable and easy to follow? P25

- This is generally not easy to follow or particularly reader friendly.
- 2.13 What about a business using access to private land for pony trekking or mountain bikes? Repeated access on some routes will cause damage, particularly during winter or wet weather.
- Main comments relate to the understandability/how easy to follow aspects (*further comments at start*) eg:
 - Strongly recommend that SNH pilots the Draft to ‘people in the street’ – all those responding to the consultation will be ‘informed’ to a lesser or greater extent and therefore are not in a good position to judge whether it is “understandable and easy to follow”.
 - The sequence of subsections (which should also be sub-titled) appears to be without order which is not easy to follow – a clearer and more logical sequence would be – ‘Where’ (existing 2.2) followed by ‘Where not’ (existing 2.15 on) followed by ‘When’ (existing 2.4 on) followed by ‘What’ (existing 2.7 on) followed by ‘What not’ (existing 2.16) followed by ‘PROW’ (existing 2.19 on).
 - Description of Core Path Networks should be included earlier, in 1.8.

Around the margins of a field where crops are growing

- There are contradictory statements such as ‘you should not disturb wildlife or plants’ but encourages or recommends access to the margins of fields where crops are growing. These are mutually exclusive. There must be an exclusion period during the nesting season at the very least AND take into account the agri-environment scheme rules, otherwise will be in contravention of environmentally beneficial schemes.
- Consideration needs to be given to wildlife schemes and agri-environment schemes.
- Many field margins where crops are grown have been set down specifically for the benefit of wildlife including species such as grey partridge and brown hare, both UK biodiversity species and both in decline. Nests can be disturbed and damaged by walkers, dogs, bikes and horses.
- Under the Rural Stewardship Scheme farmers are being paid to create grass margins for wildlife such as grey partridge, linnet and cornbunting and the rule specifically state that riding along the strips is not permitted as this would adversely affect the conservation benefit of the margin. This would also apply to cycling.
- In the code p47 it says cycling and horse riding around the field margins is permitted but this is specifically not allowed under RSS or CPS.
- far from encouraging farmers to leave margins for wildlife, which is what many conservation advisers have been doing for years, the possibility of people walking around the edges of fields is likely to cause farmers not to leave margins and therefore will result in less wildlife habitat, which will be detrimental to many UK BAP species.
- P27 indicated that disturbing wild birds and animals is a criminal offence but actively encourages actions that will cause disturbance i.e. cycling and riding around field margins

Grassland

- Across Scotland from March to July wading birds such as lapwing, curlew, snipe, and redshank are nesting and fledging which can be disturbed by walkers and dogs etc
- Under the RSS farmers are being paid to manage inbye open grazed grassland and wet grassland and create wildflower grasslands for wildlife such as grey partridge, cornbunting, brown hare, lapwing, redshank, curlew. The rules state that for open grazed grassland livestock must be excluded in order not to disturb wildlife. Free access into these refuges cannot be permitted and still provide farmers with tax payers’ money to manage them for ground nesting birds. Once again an exclusion for these areas is needed.

Fields where no crops have been sown or are growing, and also grass grown for hay and silage (accept at a late stage of growth)

- Under the RSS farmers are being paid to manage hay and silage fields for wildlife such as grey partridge, cornbunting, brown hare, lapwing, redshank, curlew and the rules state that for open grazed grassland livestock must be excluded in order not to disturb wildlife.

- Similarly an exclusion period is needed for public access. Vegetation below ‘ankle height’ is ideal for ground nesting birds.
- In para 3.6 sites prone to damage and are discussed once again mention ‘extra care’. The point is missed here that often damage is cumulative ie it is not the responsibility of the person in question, but may be cumulative. There needs to be a management plan and restrictions in place to protect these vulnerable areas. Other countries have permit systems for visiting wilderness or vulnerable areas, why does Scotland not follow this example? Why should these areas be allowed to be damaged?
- SNH are responsible for protecting the natural environment. Access should not be their only priority/ responsibility.

Exercising Access rights responsibly

6) 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 – unreasonable interference in the form of damage or disturbance causing harm or loss – set too low or too high, or is it about right? P30

- See comments above
- When is lambing time? Heavily gravid sheep as much concern as lambs themselves
- The Code needs to include ‘dogs under proper control’ on field margins and grasslands – why have these important habitats been omitted from the list on p28?
- Mountain bikers, in general, do not get off and push their bikes on wet or unsuitable ground and neither do they dismount when passing pedestrians on narrow paths. They seem to assume some right of priority. The wording needs to be more explicit ie cyclists have to dismount when passing pedestrians on narrow paths etc.
- Who will pay for damage to fences etc? It is unfair to make the farmer pay. The Code keeps suggesting switching from one field to another or taking alternative routes, but in reality there are only a small number of gates, so it is inevitable that people will be climbing dykes, fences etc . The Code needs to make it very clear that the damage has to be paid for by the accesser.

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? P31

- “Responsible for your own actions” – what does this mean? It is a ‘sound-bite’ and needs greater definition to be of any use to people.
- The way in which this booklet is written is confusing and on one page one message is given and on another something different – for example:
- P28 Exercising access rights responsibly: at a glance. Keeping your dog under proper control. The code states that you should keep your dog on a short lead in fields where there are sheep, cattle or other farm animals. It does not say here to keep a distance from the animals.
- P36 Then says stay at distance from the animals. If you are in a field of cattle especially cows, bullocks or heifers and you have a dog on a very short lead you are probably doing the most dangerous thing possible as the cattle will probably be attracted to the dog and possibly charge or at least mill around and you could be

kicked or trampled. It is strongly advisable that people with dogs should avoid walking in fields with cattle.

- The dog does not even need to be in a field to cause flight in farm animals. It could be on an adjacent CPN and may cause distress to farm animals.
- If SNH are, through the Code, encouraging people to walk through fields with livestock, who is legally responsible if the person is injured? Will it be SNH because they have issued the guidance? SNH have completely under-estimated the potential danger from livestock. To advise walkers 'to stay a safe distance' from livestock is rather pointless as livestock are able to move and may do so very quickly if they spot someone in a field.
- Guidance not sufficient as issues such as zoonotic disease and biosecurity risks are not well enough explained. User risk – personal injury and liability not adequately explained.
- (3.37) Many cows calve in May and early June and there is also autumn calving. Cows will be very protective of their calves for many weeks after calving. The dates should be changed significantly if SNH want to be seen to be in touch with what happens on farms.
- The most important areas for ground nesting birds have been left off the list. Field Margins, grassland and set-aside MUST be included in the code.
- It is inappropriate and dangerous for SNH to suggest that people should picnic in a field with livestock – out on hill ground may be okay, but not on in-byes.

8) Does the Code strike a sensible balance between the needs of people exercising access rights and the need for people to have 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?

- No – there should be a minimum distance for people to stay away from other peoples houses..
- People should not be allowed to loiter near private dwellings or steadings at any time.
- More detailed guidance is required. Privacy is a personal thing and parameters may be more helpful – distances, etc.

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? P32

- Much will depend on topography and time of day (daylight/darkness).
- It should be at least 50m unless there is a public right of way closer than this. There should possibly be a greater distance at night eg 100m

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

- No because of the following:
- Biosecurity, security and health and safety issues need to be addressed

- The code suggests farmers are likely to be around the farm steadings to give permission or suggest alternative routes. This is highly unlikely in practice as farmers are so busy they could be anywhere.
- There is too much occasional activity that cannot be anticipated – machinery operation, livestock movements, etc.

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 you don't, please explain why. P33

- No because of the following:
- Advising the public is an onerous task.
- It may be easier for authorities and organizations to provide notices and alternative routes, but farmers do not have the time or money to produce signs and route markers every time they need to do something on the land – which is virtually continuous
- Farm staff are not always present during land management operations for example field irrigation.
- Risks and operations might be obvious to rural dwellers but town dwellers may be completely ignorant of any risk. More effort/education is required in this area.

12) Do you think that the Code strikes the right balance between people being able to exercise access rights responsibly and ensuring that any risks to animal health are minimised? If you don't, please explain why. P34

- No because of the following:
 - Dogs may also get ticks/ring worm etc. Biosecurity measures not really mentioned at all.
 - Disposing of dog dirt (.3:38, p36). This should include on inbye farmland. Many farms are maintaining high levels of biosecurity. Additionally farmers are in farm assurance schemes making it compulsory to worm farm dogs and cats. As it cannot be guaranteed that dogs owned by the public have been wormed, dog dirt should be picked up.
 - It is also not good enough to say fields intended for human consumption . Crop identification will be almost impossible for many accessing land – what does a field of brussels sprouts look like or swedes for human/stock?
 - Include reference to the impact on human health (will act as a good motivator for compliance!)
 - Often gates are left open and farmers do not have the time to keep checking their gates etc.
 - Animals can be stampeded by people with or without dogs and may injure themselves.
 - Rubbish and litter can be harmful to livestock. Take a quick look around some areas to quickly realize that some people take no notice of Codes asking that they take their litter home.

13) Do you think the guidance in the Code strikes a reasonable balance between people exercising access rights through fields and the interests of land managers? If you don't please explain why. P35

- No because of the following:
 - See above comments on farmers in conservation schemes etc
 - Will everyone be able to distinguish between a young cereal and a young grass field? How do SNH propose to make this clear to people?
 - There is no provision for recovery of financial loss to land manager for time spent managing access.

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 don't think the balance is fair please explain why.

- No this part is poorly written as follows:
 - This code is potentially the most damaging thing to wildlife in recent years. It appears that little consideration has been given to the implications. Much more detailed consideration has to be given to the effects on wildlife
 - In situations of a conflict between "Care for your environment" responsibilities and those to land managers eg going into a crop to avoid disturbing a nest – which has precedence? Guidance is needed.
 - In 3.6, p30 the code indicates wildlife can be more easily disturbed in winter or breeding seasons but gives no indication at this point when the breeding season is. March to August for many farmland species.
 - P36 Keep your dog under proper control. The code says you can reduce the likelihood of your dog disturbing birds where by keeping it on a short lead there are ground nesting birds and says they are likely to be in moorland etc. The code has huge omissions as it has omitted inbye land on farms – bare ground in Spring for lapwing, wet grassland for snipe and curlew and redshank.
 - SNH needs to ensure protection is given to wild birds and other wildlife. Field margins need to be removed from access altogether and grasslands need to be given much better protection from disturbance and damage.
 - Interpretation of impact – incomplete. Can't depend on users knowledge.

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? P36

- No see above and as follows:
 - I own a dog, but would not dream of walking in areas where I thought birds were nesting, even if the dog was on a lead. As many birds and other species are declining. we cannot afford to cause them even further problems.

- Not defined enough. Dogs should be under close control e.g. to heel or on an extended lead (10m). Anyone entering a field with cattle do so at their own risk as cattle reaction cannot be predicted. They should avoid such fields. See Q7
- What about game birds/crops, ground game, etc?
- Reference to disturbance of anglers is also needed.

16) Do you think that the guidance of 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. P37

- Groups above a certain size say 10 should always ask land manager as the impact is potentially greater.

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? P40

- This is a real problem area. To say or do nothing in some cases may be irresponsible. Also gates may be locked for reasons other than preventing access. To stop stock escaping, mixing breeding stock too early, etc. Can the code deal with this?

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? P41

- Much will depend on when CPN is identified and when activities commenced. List is quite prescriptive and not overly helpful. This raises questions of liability.
- Farmer experience has been a continual problem with gates being left open, allowing sheep back to the hill or managed groups to become mixed. Farmer has to sometimes resort to locking gates. This would be unreasonable by the code which farmers believe to be wrong.
- There is a similar problem with flytipping and theft. Secure gates would reduce this risk but also peoples access rights.

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. P42

- Account needs to be taken of obligations under agri-environment schemes.
- This new Code/legislation will make it extremely difficult to curtail the activities of hare coursers. At present suspects can just about be challenged when they are trailing around the farm as they have no reason to be walking across fields with dogs etc, but this Code will allow them access wherever they want to go. This has serious implications for the future survival of hares in some parts of Scotland, where illegal hare coursing continues to be a problem. What do SNH propose to do about this? It is no use just to say that it is a matter for the police. There needs to be something in the Code which allows for exclusion of people suspected of undertaking illegal activities. The Code could also have serious implications for the control of badger baiting.
- Both land Occupier's Liability and public liability is totally unclear.
- (4.11) is unclear – what are the parameters of this?
- No, in respect of Section 4 versus Section 3 – land managers have an 'added value' responsibility placed upon them "Help people to enjoy the outdoors responsibly", an equivalent responsibility is not placed upon recreationalists (only passing mention in 3.5). Section 3 should be strengthened to give equity on this matter – apart from the 'suggestions' in 3.5 it could also include eg reporting of problems.

20) Do you think that the guidance provides sufficient encouragement and guidance for action by and managers to help people exercise access rights responsibly? P44

- Reasonably – although more scope for interpretation is required.
- 4.1.1 Last sentence – add advance notification is required to be effective.

A Practical Guide to access rights and responsibilities

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.

22) Can you think of any other situations that might be regularly encountered which should be included in the table? P46

- Lamping of foxes.
- Public responsibilities could be strengthened by inclusion of need to report problems where appropriate eg Page 48 "Hills, mountain & moorland" re churned up ground.
- Sports pitches p49 – add need to remove dog dirt (as per golf courses).
- Need to sort out field margins, hay and silage crops and unsown crops
- P49 - Open pasture land with livestock should include that wildlife such as curlew and lapwing may be disturbed March to July.

- Numerous suggested places/uses are mutually exclusive at certain times. SNH needs to recognize that it cannot achieve multiple objectives in all cases and make some sensible changes to the Code.
- Who is going to pay for the maintenance of paths and tracks used by bikers and horse riders.?
- The Code is wrong to give the impression that low ground shooting just takes place in woods and forests. A more accurate representation should be included.
- Guidance is needed on safe distances where machinery working.

Where to get Help and information

23) Do you find the advice in Section 6 useful?

No in general there is insufficient guidance as follows:

- Conflict is inevitable.
- P52 should include the SNH web site and the web page to access local authorities
- Most of the problems will be outwith local authority working hours – what is the advice in this situation?
- Do police know their responsibilities at a local level?
- What about the car parked irresponsibly and no owner to challenge?
- It is important – could usefully refer early on to issue of the public reporting problems.

24) Is the guidance for dealing with irresponsible behaviour sensible and realistic? If not please say why. P54

- The majority of public respond well to being advised about irresponsible behaviour due to lack of understanding of their actions. However some do not. Code does not give any confidence that removing their right of access will have any effect. Worst offenders dog walkers, litter droppers. What effective power is there to prevent people from behaving this way?
- Not sensible in its present form:-
- It should be borne in mind that all readers of the Code are likely to take on board the guidance in Section 6 about how to deal with irresponsible behaviour and are likely to use it to challenge/approach people. As it stands it is wholly inadequate and needs a complete review/modification.
- It must include reference at the start to personal safety – approaching certain people and in the wrong way will put the ‘challenger’ at great risk. The need to avoid a confrontational approach should also be underlined – and specific guidance on behaviours included.
- Reference to reporting criminal behaviour to the police in certain instances e.g. badger baiting should not be the last point.

- It needs to allow for the fact that land managers may be behaving unreasonably (as currently written 6.4 assumes that unreasonable obstruction will only take the form of physical barriers, in practice intimidating behaviour on the ground may well occur – especially if they have been approached inappropriately) ie an equivalent to 6.3 needs to be written to cover this eventuality.

Yours sincerely

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