

# WILD LAND NEWS 55

Spring 2002



**COMMENT: Focus on Access**

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*Fiona Anderson examines the changes to the Access section of the Land Reform Bill as a result of the public consultation process.*

The Scottish Parliament laid a heavy load on itself when it published the draft Land Reform (Scotland) Bill in February 2001. The consultation elicited 3,587 responses, more than to any other bill ever published in Scotland. More than 80% (2,914) related solely to Part 1 of the Bill on access, and of those 76% (2222) came from individual hill walkers, mountaineers and members of clubs and societies. 14% (459) of the responses to Part 1 came from landowners, the remainder from Community Councils, local authorities, recreational and sporting organisations and others.

Recreation interests criticised the Bill for diverging from the consensus that had been achieved in the Access Forum, and for including too many new provisions that could be open to abuse. In particular, Section 9 would allow widespread restriction of access by landowners, Sections 8, 10 and 16 gave local authorities new powers for suspension of access rights, exemption of particular land and conduct etc, while Section 15 created a new criminal offence. These provisions would seriously restrict the current freedom of access traditionally enjoyed in Scotland.

Land management interests were concerned that more of the measures for management of access should be included in the Bill rather than relying on the Access Code (which would have advisory status like the Highway Code.)

Recreation interests opposed this as complex legal definitions and measures would be required, providing a field day for lawyers, compared with flexible co-operation under the Code. Land managers also sought exclusion of commercial recreation activities which might be in competition with a landowner's enterprise on his own land, and were concerned to emphasise path provision particularly over enclosed land, and exemption of crops, including grass grown for hay or silage.

Other issues included whether to restrict access to "land set out for a particular recreational purpose while it is being so used." Failure to include golf courses within access rights could effectively block access on foot to many popular areas. And what about grouse moors?

Many of these criticisms have been listened to. Sections 8, 9, 15 and 16 have been dropped, but sadly too much remains in the Bill that is of great concern to those of who enjoy the freedom of Scotland's countryside in the traditional way. For example, access is to be restricted through farm steadings, supposedly on safety grounds, although many footpaths run through farmyards, while access to golf courses is to be restricted to passage, not recreation, which rules out informal sledging and skiing in winter. Business and commercial activities are to be excluded from access rights - does this prevent mountain guides, professional naturalists and photographers from walking over the hills? And grass crops are to be exempted - expect grass fields to spring up all over Scotland!

Dave Morris of the Ramblers Association points out there is evident confusion and lack of clarity in the access legislation that will create confrontation and conflict between walkers and land managers for years to come. This is because the common law right of walking harmlessly across land will be different from the new statute law, so that for example

"commercial" walkers would have to take access under the former law. The Minister appears to believe that there is a Law of Trespass in Scotland. Thus the Bill is couched in terms of aiming "to confer and regulate public rights of access " and "creating access rights" instead of "securing" the existing common law basis by which we take access today. Which is what Angus Mackay, the Depute Justice Minister, said was the government's intention when he spoke on the proposed legislation in November 1999, i.e. "to codify what happens currently."

Such an approach would fit well with the recommendation of the Scottish Law Commission whose preliminary view was that the public rights should be placed "on a statutory footing, subject to preserving the full extent of the present common law rights." Their fundamental objection to the draft Bill was that it is a "source of confusion for local authorities, police and members of the public" An approach which "confers access rights" will produce legislation which is restrictive, giving too many opportunities to those who wish to restrain access unreasonably. We may lose more than we gain.

## COMMENT: Focus on Access

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*Alistair Cant considers the Stage 1 Report on the Bill by the Justice 2 Committee.*

The Committee of the Scottish Parliament looking at the Land Reform (Scotland) Bill has concluded its Stage 1 deliberations. Known as Justice 2, the Committee examined many elements of the issues, considering numerous written and personal submissions from representatives and all shades of 'experts'. The Bill contains the 3 elements of Access; Crofters right to buy; Community right to buy.

The Justice 2 Committee held an extra day to consider in more depth submissions and advice on the question of whether there was a law of trespass. The Committee state in their Stage 1 Report that they remained unpersuaded by the evidence and arguments that there is either a clear prohibition or a clear permission in relation to harmless access to land. However, importantly, they note the principle of Scots Law that what is not expressly prohibited is permitted.

The Stage 1 report, published on 15 March was followed by a debate in Parliament on 20 March. The Bill now goes back onto Stage 2 and back to Justice 2 where any amendments will be considered. Stage 3 occurs when the Bill comes back to the floor of the Scottish Parliament for a final debate.

Generally the Justice 2 Report is excellent, with the benefits of this Committee system revealed in the clear and incisive analysis and conclusions. The Committee seem in effect keen to restore the Bill to look similar to the original Access Forum report. The Wild Land Group are very pleased so far.

At a recent meeting with his MSP, Alistair Cant, our Co-ordinator, was advised that by his MSP that he was surprised his post and e-mail bag was not containing many letters and messages from the pro-Access lobby.

Readers are therefore urged again to help the campaign for good access to land by contacting your MSP as soon as possible. Some key points to stress include:

- There is in effect access to the land at present and the Bill must not be allowed to restrict our existing freedoms.
- As much of the detail as possible be move to the Scottish Outdoor Access Code, rather than kept in the Bill. This is because the Bill should be kept simple and just to promote the principles of access. The Code should give the details and these details can be amended more easily in the light of negotiations between the key

organisations in the countryside, who attend the Access Forum. The Access Code should become an important stand-alone document like the Highway Code.

- While a core path network is important, the right to wander as recommended by the Justice 2 Committee should be achieved in the legislation, especially for access through enclosed farmland.
- There must either be access through farmyards or alternative routes be in place whenever a route through a farmyard is going to be excluded from the public.
- The Police should not be drawn into disputes over interpreting the Bill once it becomes law.

It is so important to maintain pressure on MSPs to ensure this crucial legislation preserves and enhances our existing rights and freedoms. Send that letter and e-mail now please.

## Uproar Over Lingerbay Upset

Article

Environmental groups were furious over a terrible gaffe by the Scottish Executive. It seems that the letter, signed by Sam Galbraith, refusing Lafarge Redland permission for the Lingerbay Superquarry failed to give 'sufficient and adequate' reasons for the decision. New legal advice suggested that the wording of the letter from the Executive could not justify Sam Galbraith's decision. He overturned the advice of Reporter Gillian Pain, who recommended that on balance the project should go ahead.

The Scottish Executive, as a result, have withdrawn from defending the appeal in the Court of Session by Lafarge Redland against the decision. This withdrawal will also mean in all probability that the taxpayer will have to meet Lafarge's legal costs. Islanders in Harris were left in limbo again as this may mean more delay and confusion.

The superquarry does not automatically now go ahead, but it means that Ministers will have to listen to fresh evidence from any of the parties to the public inquiry.

The Wild Land Group echoed the voices of other environmentalists in being exasperated and annoyed. SWLG Co-ordinator Alistair Cant states that: "We thought this was an elaborate April Fool but it was 13 days too early for that. The thought of this project going ahead due to bureaucratic incompetence is appalling"

The officials who framed this decision letter for Sam Galbraith should be brought to task, and every effort made by the Scottish Executive to re-confirm the original decision of Sam Galbraith.

**Alistair Cant**

## Cairngorms - a better turning?

Article

*15 years after the Scottish Wild Land Group highlighted both the value and troubles of the landscape, **Bill Wright** warns that simple National Park designation will not answer all the ills identified over a decade and a half ago.*

City lofts hide all sort of forgotten material. In my case a recent sort out revealed a dust covered Scottish Wild Land Group Publication entitled 'Cairngorms at the Crossroads', which after grubbing through it for some time I pinned down to 1987. The city loft here is within the forgotten diocese of Dunkeld, under certain definitions, Britain's second smallest city. Daft really.

But then definitions for lovers of wild places have also always been a struggle. Getting the wild land experience on a formal par with exceptional achievement in fine art, architecture, music or athleticism has always been a battle. The mass significance of the Cairngorms has time and time again been repeatedly documented - not least in the 1987 work that I rediscovered in my loft - but meaningful designation of wild and remote places has until recently been too great a step for those that shape and control the landscape.

The difference now is we are at least on the verge of a step forward, a birth, but a birth which might lead to disability. National Park designation for the Cairngorms is about fifty years overdue. Personally I reckon the reasons for that delay was largely a combination of its ownership pattern, ambivalence of some conservation bodies, the geography of Scotland, lack of Westminster parliamentary time and not to mention the House of Lords.

That has now significantly changed.

The establishment of the Scottish Parliament has revolutionised the availability of Parliamentary time to talk about Scottish matters, the positioning and influence of the lairds and increased the importance for Scotland of visiting our wilder corners (thanks to foot and mouth disease). Not least it has passed a National Parks Act (Scotland). Most of the key conservation bodies are on board too.

### **Largest National Park in UK**

Now in the Cairngorms we are on the threshold of a historical event - the establishment of the UK's largest national Park, twice the size of any other before it. The problem is that while such an extensive National Park, the opportunity to change the scene within its boundaries or address such business that would further wreck it are going through a risky confinement.

Planning powers, as proposed, are in the main to remain with local authorities. Among them those who have seen through the funicular and tried to get development westwards into the Northern Corries - one of the battle sites identified so powerfully in the 1987 'Cairngorms at the Crossroads'.

The reasons for this seem both confusing and cynical. Cynical because of local politicians too often fed by the agendas of those in tax paid officialdom. It regularly appears that to date, the Enterprise Agencies in particular have sought to play down the value of the Cairngorms wild, remote and natural character. Instead they have invested our money in favouring short-term jobs advantages however badly paid or insecure. Jobs not sufficiently attractive to stick with beyond the time a passing student from Oz would want to put up with such terms or conditions.

Similarly too often party politics has shaped the landscape of Strathspey in particular - in concrete. Political populism in the area has repeatedly been favoured rather than taking a deeper examination of the issues and consequently presenting an unpopular but longer term vision beyond the four years that MSPs will be paid. Councillors similarly have sought to follow what they think people want within the time they are due to be re-elected, rather than present imaginative alternatives that will be a source of pride, rather than embarrassment, in decades to come.

### **Compromise on planning powers**

The confusion comes in when examining the planning compromise that Scottish Natural Heritage, as Cairngorms National Park Reporters, have consequently come up with. They attempted to address the yawning gap between those wishing to retain local authority planning powers and those of us wishing to ensure the new Cairngorms National Park Board has the power to shape the landscape it has been given responsibility for.

I indulge in such rhetoric because 15 years on from the Wild Land Group's analysis of the Cairngorms, the evidence is all too plain. Things have yet to improve in a manner that will ensure that the scourge of the Cairngorms wild remoteness, the bulldozer, is to be firmly booted off the hills.

Apart from the funicular, within recent months for example Highland Council have yet again given the go ahead for a new bulldozed track stretching up a hillside within the proposed National Park boundary. This time they even have allowed it on the Southern slopes of Carn na Lair in the full gaze of those driving North on the A9.

The pressures amount to more than additional scarring from tracks, poorly situated visitor centres and consequent tourist erosion. Housing controversies may appear less relevant for the devotees of wild land. But local authority plans for vast housing expansion within Strathspey have implications way beyond the Strath. The upstream consequences extend to some of the places most cherished for their lonely charm. The infrastructure needed to supply such housing expansion in the straths means for example development of remote Loch Einich for water supply.

To address such complexities an integrated approach is vital in strategic planning, local plans and development control. It also means weighing up allied local authority and commercial developer demands for more housing against National Park aims. Without full planning powers it is difficult to see how candidates might come forward for the five directly elected places on the National Park Board when counterparts in Loch Lomond & the Trossachs will have so much greater power.

Additionally under the complicated joint working arrangements for strategic and local planning two opportunities will be afforded to local councillors to vote on plans when they have only one. Like those five members directly elected, local council members will have the opportunity for their say on the National Park Board. But the same councillors will also have their say again at their local council. So called 'joint' arrangements with at least 40% of the board already made up of local council reps, thus weighs heavily in favour of local authorities, when the National Park Board decisions also then have to get past local councils!

To the wanderer in search of solace, fresh air, open space and adventure in the lost corners of these mountains such murky affairs may appear about as appealing as being shut away in a dark, dusty city attic. But for the Cairngorms to remain so wild, challenging and unique, the National Park framework that will shape their future has to be effectively drawn for those qualities to be maintained and perhaps with the right direction, even restored.

**Bill Wright** is Campaign Officer of the Cairngorms Campaign.

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## SNH Considers Wild Land Policy

Article

Scottish Natural Heritage's main board considered at its February meeting a draft statement on wild land. An earlier version of this statement was circulated to a selection of outdoor organisations including this Group. We were delighted to see SNH addressing this issue in a more formalised way and comments were sent in on various aspects of the topic.

SNH are still working on revising the draft statement in the light of their Board's comments, but it will be made public in due course, and we hope in probably the next issue of Wild Land News to have a major article on it. The covering paper for the draft statement can be seen on SNH's website, [www.snh.org.uk](http://www.snh.org.uk), under Board Agenda papers for February 2002.

It is clear that what is special about Scotland for so many people is its wild land, and yet this is such a hard concept to define and defend at the administrative and legislative levels. The SNH paper is a welcome step in the right direction.

*Alistair Cant*

## AGM 2002

The AGM of the Scottish Wild Land Group will take place  
on Saturday, 18th May 2002 at 7:30pm  
in the [Royal Dunkeld Hotel](#), Dunkeld

*We are pleased to welcome*

**Andy MacPherson**

*Co-ordinator, International Year of the Mountain,  
who will give an illustrated talk, followed by a discussion on:*

**Scottish Wild Land:  
of Global Importance ?**

**Andy is at the heart of the IYM activities as IYM Co-ordinator based at the Centre  
for Mountain Studies in Perth College**

**His talk will be preceded by the brief AGM of the Group.**

**All welcome No admission charge**

### Pre-AGM walk/visit

Come with us to Schiehallion - site visit and Hill walk during the day - Saturday 18 May - 10.00 am start.

We will be accompanied by a representative from the John Muir Trust. All are welcome to find out on the ground the hopes, aspirations and hard work of the JMT at Schiehallion. Meet 10.00 am at the Braes of Foss car park, GR 752558 OS 52. Bring a packed lunch and suitable clothing / footwear.

### Food and Accommodation

Food and Accommodation available at the Royal Dunkeld Hotel, Atholl Street, Dunkeld. Bar suppers available from 5 pm (no need to book). Info at [www.royaldunkeldhotel.co.uk](http://www.royaldunkeldhotel.co.uk).

## Large-scale hydro development returning to the highlands?

*Article*

*John Digney reports on a proposal for a £50m scheme for an undisclosed location.*

Although Scotland's post-war flurry of hydro-electric dam-building ended nearly half a century ago, there is now the possibility of a new large-scale £50m scheme, proposed by Scottish and Southern Energy, for an undisclosed location somewhere in the north of Scotland. It is understood that the scheme is one that was shelved in the post-war period and that it would have a capacity of between 30 and 100 megawatts.

While declining to reveal the site, Scottish and Southern's chief executive, Jim Forbes, spoke of "minimal environmental impact", yet appeared to anticipate opposition when he said ".this will also be a significant test of the sincerity of the environmental movement." Members of the environmental movement, however, were quick to point out that other considerations, such as impact on communities, landscape, biodiversity and freshwater ecosystems, would have to be balanced against the advantages of clean energy generation. Without further details we can only make general comments, but this proposal has certainly come as a surprise, as large-scale hydro did not even figure in the Scottish Executive's recent renewable energy study on which we reported in the [last issue of WLN](#).

Any site in northern Scotland which is topographically suitable for a hydro scheme is likely to be of high landscape value. So what differences might we expect between modern hydro schemes and those of fifty years ago in the name of "minimal environmental impact"? We should certainly expect the undergrounding of transmission lines and pipelines. We should also expect concealed turbine-houses and landscaped dams, to avoid the monstrous bare concrete structures which disfigure many glens.

What cannot be avoided, however, is the visual effect of drawdown - the shoreline scarring that results from exaggerated fluctuations in water levels. We have all seen the appalling ugliness of partly drained reservoirs after a spell of dry weather. The more gentle the slope of the shore, the wider the scar for any given drop in water level. And the longer the loch, the less localised the impact.

Scotland's glens are peppered with these schemes, and hundreds of miles of loch shorelines are marred by the effect of drawdown. Do we really want more?