

Access Rights and Terminology

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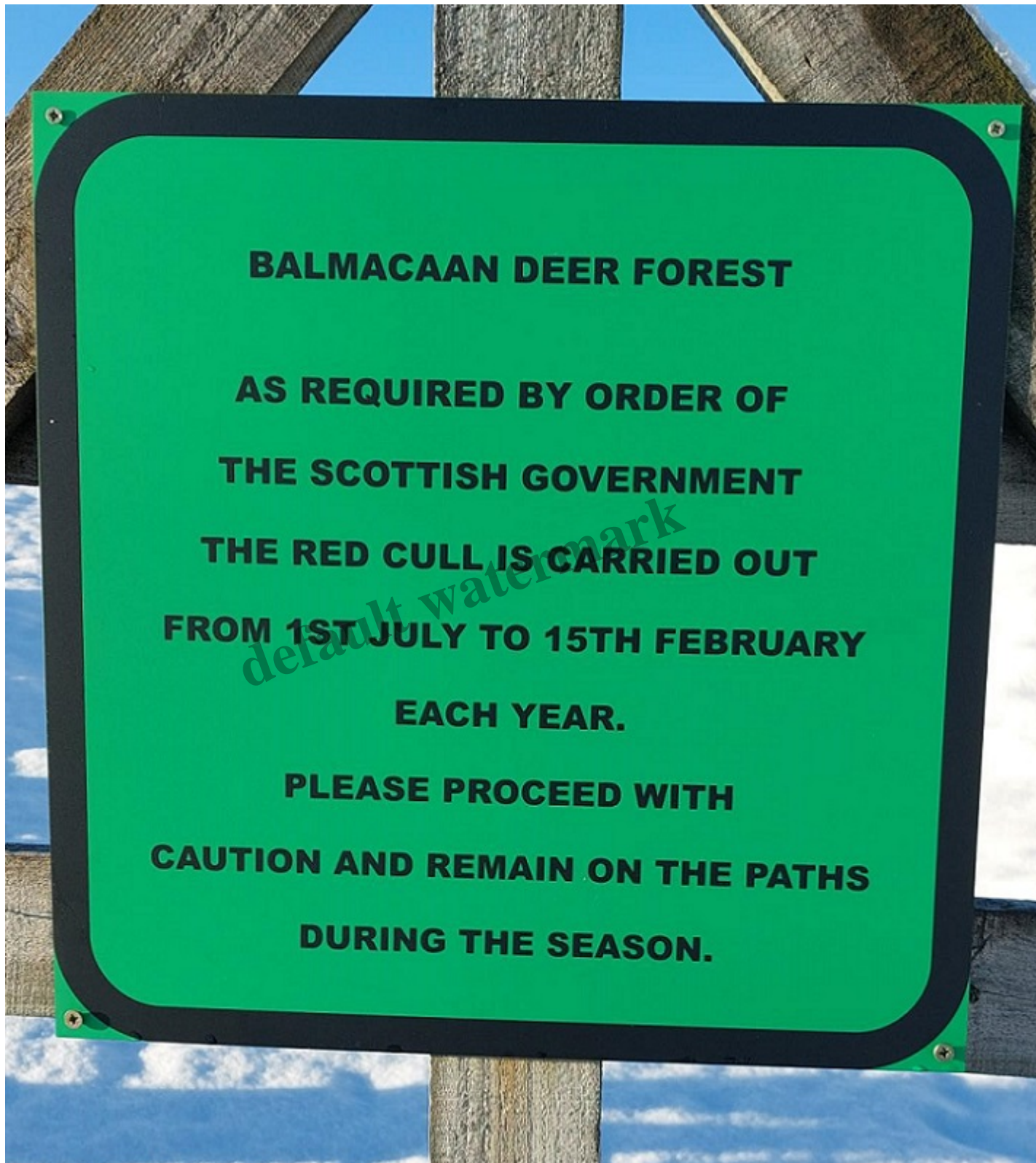


Photo credit Mike Dales

As we celebrate twenty years since the passing of the Land Reform (Scotland) Act 2003, and as someone who was involved in the process that led to the establishment of the statutory access rights contained in that Act, and its subsequent implementation, I would like to contribute my personal

thoughts on the current discussion around some of the terminology being used in connection with our hard-won rights.

“The Right of Responsible Access”

I will start by saying that I have a problem with the term Right of Responsible Access, and I will explain why.

To me, the term Right of Responsible Access carries a suggestion that this is the only right, or set of rights, that has to be exercised responsibly. But surely, every right or set of rights has to be exercised responsibly. For example, I have a right to go to watch a football match, but that right has certain boundaries. It should be immediately obvious that if I go to a match, I have a responsibility not to shout racist or sectarian abuse at players and opposition supporters. That’s because there are laws that set out what is not acceptable, and it is my responsibility, quite rightly, to stay within the law.

Picking out a random profession, let’s say I was working as an investment banker (by the way, I’m not), there are strict laws around what I can and can’t do within my job. Again, I have a responsibility to carry out that job within the law of the land and the ethics or codes of conduct for my profession. I chose that profession as my example because there have been high profile cases of people who chose to be irresponsible and who broke the laws governing their work, and therefore a bit more emphasis on responsibility might not go amiss.

Wherever we look, in our professional or private lives, we have responsibilities to work and play within the law, and yet we don’t talk about the responsible right to go to a football match or a responsible right to work in investment banking. The law-abiding citizen knows where the boundaries are and doesn’t have any interest or thoughts in going near them. In contrast, the criminal element in society is always looking for an opportunity to cross those boundaries in the hope of getting away with it.

My concern with the use of the term Right of Responsible Access is that it suggests an expectation on the part of the people who continue using it that there is going to be widespread irresponsibility, and its deliberate use appears to be aimed at promoting the perception that it is only the recreational visitor that will be capable of being irresponsible.

The worst example I came across of this view that responsibility only applies to one party was at a meeting I attended when I worked for the Scottish Canoe Association. I was told in a very impolite way by an angling representative that “you only have a responsible right of access”, to which I replied that we had a right and that both sides were expected to act responsibly. I went on to say that a landowner or fisheries manager had responsibilities to be fair and accurate when, for example, they put up a sign to communicate a message to canoeists and that it would not be irresponsible for a canoeist to ignore an irresponsible sign. The guy was furious with me and was effectively arguing that if they put up a misleading and non-Code-compliant sign, then we had to obey the message anyway. I’m pleased to say that his outburst was in front of the entire meeting and his view was not backed up.

Just as the Highway Code sets out, in a user-friendly booklet, the laws and responsibilities for using our roads, the Scottish Outdoor Access Code performs the same function of being the readable version of the relevant legislation and sets out the responsibilities expected of all parties, whether that

be recreational participants, land managers or public bodies. I welcome that emphasis on responsibility, but only if it always applies equally to all of those parties, and certainly not if it is only going to be used as a means of finger pointing towards one of those parties.

“Right to Roam”

The recent Parkswatch article by Calum Macintyre [here](#) is an excellent reminder that Right to Roam is an internationally recognised term and that like the Scandinavian countries, Scotland is one of the enlightened countries in Europe where you don't have to stay on a path because the law of the land, as well as our historical traditions, provide us with a clear right of access to most land and water.

My interpretation of the term Right to Roam is simply the right to leave a path and explore beyond the edge of the path. That is what we have in Scotland, and it is to be celebrated, cherished and protected, because it doesn't exist in every country and certainly doesn't exist in most of the rest of the UK. The ongoing outrage surrounding the overturning of what everyone thought was the right to wild camp on Dartmoor is a stark reminder of how a single landowner in England can deny the general public their right to enjoy an overnight experience in a national park. Given that alternative scenario, we really must celebrate, cherish and protect what we have in Scotland.

When it comes to trying to deny the public of their access rights in Scotland, the most insidious form of control is in the many signs we see with the instruction or recommendation to “Keep to the path or track” or “Remain on the paths”.

Calum made this vital point in his article: *If we allow our Right to Roam to be known as a “Right of Responsible Access” how long until “responsible access” means having to stick to marked paths? This is how our rights erode away at the hands of powerful vested interests.*

Most of our walks, runs, cycle rides, horse rides and other land-based recreational journeys are on paths, but when our desired route is to leave the path, then the vast majority of us are capable of doing that in a responsible way. What is irresponsible is putting up a sign that is there for twelve months of the year, recommending or instructing people to remain on the path. No, that is not on, there is a right to leave the path, to walk or ride beyond the constraints of a linear path, a Right to Roam therefore, within the access provisions in Part 1 of the 2003 Act and the public are entitled to exercise that right whenever they choose.

“Scottish Access Rights”

Because the two terms 'Right to Roam' and 'Right of Responsible Access' were disliked by different groups on the National Access Forum, and therefore neither term would be acceptable by all as an adopted title for the combination of the Land Reform (Scotland) Act 2003 and Scottish Outdoor Access Code, it was felt that a new term should be created; one that would be capable of having cross-party support and be a more recognisable title that would cover all activities and imply the uniqueness of what we have in Scotland.

Back in 2010 (give or take a year) I wrote a discussion paper for the National Access Forum and the agreed way forward after our debate was that the term "Scottish Access Rights" would be adopted and promoted.

Whilst I fully support and use the term Right to Roam, I don't see a conflict between using Scottish Access Rights and Right to Roam. If we use the term Scottish Access Rights as I think was intended more than ten years ago, it would describe our entire access system, including our rights and responsibilities on paths and on water, as well as the rights and responsibilities of landowners and public bodies. This would be akin to Norway having the term "Allemannsretten" to describe their overall system. Within our Scottish system, we have a Right to Roam because the fundamental aspect of Scottish Access Rights is that there is a presumption in favour of access. We have a right to leave the path (or track) if we so choose.

It is disappointing to see that over the years since this decision was taken, very little effort has gone into using the term and promoting it to the general public. In my opinion, the lack of commitment to a term that all sides agreed on at the time and could have got behind has led to a divisive alternative like Right of Responsible Access gaining traction and twenty years after the Act was passed, we find ourselves in the midst of a repetitive argument about terminology, when it would be far more productive to be working together to promote better understanding of the Act and Code.

What needs to happen?

The Act and Code have moved us forward from the pre-2003 days when we had a Freedom to Roam based on tradition to where we are now with a Right to Roam and an emphasis on all parties having their respective responsibilities, but for me the four biggest priorities that need to be addressed over the next year or two, primarily by the National Access Forum, are:

1. There needs to be a more clear and visible acceptance from all sides that the emphasis on responsibility, which is described in detail in the Scottish Outdoor Access Code, applies to all parties and therefore any reference to responsibility should be made in a way that makes this clear. All member bodies on the National Access Forum should agree to make strenuous efforts to crackdown on anyone that persists in using the unhelpful and inaccurate term of Right of Responsible Access.
2. All members of the National Access Forum need to demonstrate an acceptance that there are rights of access to most land and water in Scotland, which means people can leave the path or track whenever they wish, and hence, anyone exercising their access rights in Scotland has a right to roam if they choose to exercise their rights. Land managing bodies may not like the term

Right to Roam, but they do need to demonstrate (to their own members and the general public) their recognition of reality that people are within their rights to leave paths and cross mountainsides, moorland, fields and the foreshore, as well as take access on inland and coastal waters.

3. The National Access Forum should re-visit the previous decision to adopt the term Scottish Access Rights, and if it is still regarded as relevant then a much greater effort should be made to promote its use.
4. The main priority for the National Access Forum over the next few years should be a concerted effort to develop a programme of educational resources aimed at raising awareness of the rights and responsibilities linked to our access system in Scotland. As well as seeking to educate those already involved in outdoor recreation and land management, a broad educational programme should also aim to reach children via schools and youth organisations, and the incredibly wide range of professions that have some kind of contact with Scottish Access Rights. This list of professions could include access officers, active travel officers, countryside rangers, planners, solicitors, teachers, lecturers, outdoor instructors and guides, wildlife and tourism guides, police officers, farmers, foresters, gamekeepers, ghillies, land agents, conservation workers, government agency staff, plus students aiming to work in any of these sectors. There are plenty of other professions that could be added to that list.

Expanding on that final point, I'm aware that the land managing bodies want the recreation bodies to help them by promoting responsible behaviour to the people who exercise their access rights and take part in recreational activities in the outdoors, but for that to happen there are two things we need the land managing bodies to accept:

1. The recreation bodies want the land managing bodies to help by working much harder in promoting responsible behaviour in relation to how their members interact with recreational visitors and manage access on their land and water.
2. That when recreation bodies are having to defend our access rights and still be discussing terminology twenty years after the Act was passed, we're actually wasting valuable time that could be spent more productively on working with each other to develop and promote helpful educational resources.

Education really is the key to underpinning the original aim of the access provisions in the Land Reform (Scotland) Act 2003, which was to enable the people of Scotland to have greater connection with the land and water of Scotland.

Many people will remember the Scottish Natural Heritage (now NatureScot) traffic light adverts that aired on TV as well as appearing in newspapers and magazines following the implementation of statutory access rights from 2005. That campaign succeeded in raising awareness of our rights and responsibilities but there has now been a long gap with no meaningful educational initiative aimed at building on that early progress. I'm pleased to say, this is now being recognised and there are at least two new projects being developed with the aim of meeting the clear demand for more education in this area.

As we head into the next ten years of working within the framework created by the Act and Code, I have a cautious sense of optimism that these educational initiatives could provide an opportunity to really make some positive progress. If we seize that opportunity, it could help us all move away from going round and round the same old circle discussing terminology.

Category

1. Access rights

Tags

1. access rights
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3. outdoor recreation
4. paths

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