

## The right to roam – the implications of England looking north of the border

### Description

On Thursday there was a debate in the Westminster Parliament about public access to nature brought by the Green MP, Caroline Lucas, and *supported* by the House of Common Business Committee. For anyone interested in access rights the Hansard report is well worth reading ([see here](#)).

The debate started with Caroline Lucas making a powerful case for a right to roam in England, framed as a right of public access to nature:

*“Re-establishing our connection with nature is essential if we are to effectively address the terrifying biodiversity crisis that sees a million species on the brink of extinction.”*

She went on to advocate:

*“I believe it is time to expand our minds and our horizons and look north of the border to Scotland, where the Land Reform (Scotland) Act 2003 enshrined the right of access to most land and water, providing that the right is exercised responsibly. Of course, there will be some sensible exclusions such as fields where crops are growing, seasonal restrictions for sensitive nature sites, school playing fields and even gardens. However, that is essentially a much more expansive approach. It designates a universal right to roam with exclusions carved out, rather than the opposite approach that is taken in England, which is based on a universal exclusion with access only to some very specific landscapes. The Scottish approach is far simpler, meaning that we are no longer reliant on confusing and often outdated land designations that no longer reflect the nature of our countryside, and it is more equal, meaning that everyone has shared access to this island that is our home.”*

What followed was wide-ranging covering matters such as the importance of local green and blue space, equal access to nature, public transport and the limitations of the Countryside and Rights of Way (CROW) Act 2000.

Not a single MP spoke against the need to extend public access to nature. But there was a distinct difference in approach between Conservatives, who supported a voluntary approach, and other MPs, who advocated that rights of access in England should be extended on land and water.

The most important contribution politically came at the end from the Labour Shadow Environment Minister, Alex Sobel. This was reported in the Guardian as [Labour vows to introduce Scottish style right to roam law in England](#).

Mr Sobel’s initial commitment, while a considerable improvement on the CROW Act (which only provides for access to open country) did not match what Scotland has under the Land Reform (Scotland) Act 2003:

*“Labour will take tangible action to ensure every Briton is able to access the nature our country has to offer. We will introduce a right to roam Act, a new law allowing national parks to adopt the right to*

*wild camp, as well as expanding public access to woodlands and waterways.*

No mention of farmland and a limited right to camp. Almost immediately Caroline Lucas interjected and asked what *kind of right to roam Labour is supporting: is it the universal right, based on the Scottish model, or is it a more specialised one, based on exclusions?*

To which Alex Sobel replied:

*Like Scotland, Labour's approach will be that our right to roam will offer access to high- quality green and blue spaces for the rest of Britain. We will replace the default of exclusion with a default of access.*

While *high quality* leaves room for debate what about access to trashed areas of the countryside? the *default of access* is a good starting point. At last there is an end in sight to the ridiculous situation where you have a right of access on the Scottish side of the border but just a step away no such rights.

## **The significance of Labour's commitment to a right to roam for Scotland**

Whether Labour, if elected, stands by this commitment or gets it through the House of Lords remains to be seen but this has important and positive implications for rights of access in Scotland.

On the one hand, it should result in all legislation at Westminster, from rural subsidies to public order, being scrutinised from a right to roam perspective. With the civil service in Scotland often copying the UK Government, and with the Conservatives at Westminster increasingly driving a UK approach to policy in a bid to strengthen the Union, there are real risks that Scotland's access rights could be undermined by other legislation from outside. The best protection against this is to get the rest of the UK to adopt Scottish policy and the Labour commitment to a right to roam marks a major step towards that.

On the other hand, the announcement could help strengthen the resolve of politicians in Scotland to halt the slow erosion of access rights that has been taking place since the Land Reform (Scotland) Act was passed in 2003. There are many examples, including:

- the cuts in the resources devoted to upholding and educating people about access rights which is undermining many of the provisions of the Land Reform Act;
- the failure to develop a comprehensive core path network to match rights of way in England;
- the pernicious and failed camping byelaws ([see here](#));
- the attempt by public authority managers, spurred on by a lack of resources, to replace the idea of a right to roam with a *right of responsible access* ([see here](#)); and
- sitting in view of the Scottish Parliament and Scottish Ministers, the Radical Road which Historic Environment Scotland has been able to close to the public for over four years because regulations have never been amended to include Holyrood Park in access rights ([see here](#)).

It was notable that the language used by opposition MPs in England during the debate was considerably more pro-access than that now used in Scotland. English MPs had no hesitation in using

the term ‘right to roam’, although one did criticise it for not being radical enough as it sound as if it might not include access to water! The debate was also infused with talk about social justice, both the need to reverse the historic iniquities of large-scale land-ownership and the need enable the poorest sections of society to enjoy much better access to nature. That is as radical as anything that is being said in Scotland.

The calls from English MPs for the creation of access rights on the Scottish model should have provided a perfect opportunity for Scottish MPs to extol the praises of the Scottish Parliament, say something of the process that led to the Land Reform Act and for one of the SNP shadow spokespeople to offer help from the Scottish Government. Instead, the only MP representing a constituency in Scotland to speak was Margaret Ferrier, who has been outcast from the SNP and faces a by-election after breaking Covid rules. That apparent political indifference in Scotland reinforces my argument about the importance of what is happening south of the border.

Leading the political debate in England is the Right to Roam (RtR) campaign ([see here](#)). This has combined targeted protests with some brilliant research showing the unjust way people are excluded from most of England’s countryside.

The RtR campaign’s initial policy position was fairly close to the Ramblers Association and other recreational organisations in England, though more radical in intent. It aimed to extend access rights in England using the model of the CROW Act and, before that, the National Parks and Access to the Countryside Act 1949. After seventy years, however, that approach has clearly failed with rights of access only extending to 8% of England’s land and 3% of its inland water. Encouraged by some dialogue with right to roam activists north of the border, the RtR campaign modified its position and decided to call openly for access rights on the Scottish model.

Since then the RtR campaign has been busy lobbying and educating MPs in England and its influence on the debate was clear, with Caroline Lucas paying tribute to two of its leading lights, Guy Shrubshole and Nick Hayes (author of the wonderful Book of Trespass). They and the small team working with them have shown what can be done with a bit of organisation and determination.

I am delighted about this, having represented the Mountaineering Council of Scotland, as it was then known, at a meeting between the Scottish and English recreational organisations at Ullswater prior to the CROW Act. At that meeting we argued in vain for English recreational organisations to support a right to roam on the model we were developing in Scotland. We were told England was different, which was broadly correct, but also that our vision for access could never happen there. Twenty years later it appears very possible, despite all the challenges that will be created by the House of Lords. I hope the mainstream organisations representing outdoor recreation will now shift their position, seize the opportunity and support the demands of the RtR campaign for a right to roam in England on the Scottish model.

## **The way forward?**

The easiest way for Labour and the Greens to create a right to roam in England would be to adopt the relevant provisions of the Land Reform (Scotland) Act as a starting point and create an Outdoor Access

Code to match. They could then amend that legal framework to take account of differences between legislation in the two countries, such as rights of way, but there should be no need for England to re-invent the wheel.

Such an approach would be a tribute to the Scottish Parliament and reduce the chances of the commitment to the right to roam being watered down in the drafting of the bill. That is what happened with the first version of the Land Reform Bill which bore little resemblance to what had been agreed at the Access Forum between recreational and landowning interests in Scotland. The bill was only rescued by the willingness of MSPs to listen to recreational interests and reject what was originally drafted.

Adopting the Land Reform Act as a starting point would also enable both Holyrood and Westminster to address some of its weaknesses which have become more apparent as resources have reduced. For example, the provisions about the removal of obstructions to access are bureaucratic and time-consuming, requiring access authorities to notify landowners of the problem (not easy where ownership is secret), wait for a reply and then almost inevitably get bogged down in negotiations. It would be much simpler and cheaper to give access authorities the power to remove obstructions or signs designed to undermine access rights and then allow landowners a right of appeal. That would put the boot on the other foot.

If England adopted a similar legal framework for access as exists in Scotland, that would make sense from both a recreational and a landowning perspective north of the border. It would enable common messages across the UK about the importance of access to the countryside, how land owners should manage their land and how the public should exercise their access rights responsibly. That would make education of the public far easier and help address the challenge of how to help and manage visitors from south of the border who may not know where they can go and have never heard of the Scottish Outdoor Access Code. The benefits to landowners in Scotland, both public and private, would be significant.

Access Authorities and politicians in Scotland should wake up and smell the coffee! Meantime, there is nothing to prevent anyone from Scotland who supports the extension of the Right to Roam in England to join the campaign (for an update of what they are planning following the debate [see here](#)).

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