

Extending public access to land and water beyond Scotland

Description

Along with Andy Wightman and Nick Kempe ([see here](#)) I recently spoke at the event on the Scotland/England border to highlight the campaign to extend public access rights England. The text of my contribution, which I hope has relevance to national parks and other land and water in the UK, is found below.

It is worth emphasising that it is essential that any extension of access rights in England should not be based on an extension of the access rights contained within England's existing Countryside and Rights of Way Act 2000. While this legislation was an important breakthrough in securing better access rights in England, it was also deeply flawed, primarily due to the presence of land owning hereditary peers in the House of Lords. These non elected politicians ensured that CROW only covered around 8% of England's land surface and required an expensive and bureaucratic mapping process. Today no political party is going to support the public funding expenditure needed to repeat such a complex mapping process and its accompanying multiple public inquiries. A much better solution is to be found in Scotland's right to roam legislation, established through the Land Reform (Scotland) Act 2000, and the experience gained in its subsequent 20 years of implementation. Securing right to roam over most land and water in England is perfectly feasible for a wide range of non motorised outdoor recreation, educational and associated activities. Reform of the House of Lords, especially the removal of the land owning hereditary peers, has opened a wide door of opportunity.

Access to nature does not, however, simply require the extension of right to roam in England. Equally important is the need to continue the development of England's world class rights of way network; the existing time limit on the development of this network must be abolished at the first opportunity. Of similar urgency is the need to influence the ongoing efforts to reform public funding support for agriculture and forestry in the post Brexit era. Scientific reports repeatedly emphasise ongoing biodiversity losses, especially as a result of intensive farming activities and the excessive application of artificial fertilisers and pesticides. One major way of correcting this damage is by paying farmers to expand field margins, creating new wildlife habitats, improving hedgerows and planting trees. If future financial incentives help all farmers to expand all their field margins in this way, creating habitat, safeguarding against pollution and providing space for public access, it will be a massive boost to England's efforts to meet both international biodiversity targets and public health needs. Expanded field margins can ensure that we get 30% of our land and water habitats protected by 2030, as well as meeting the requirement for all citizens to have easy access to nature in all parts of England. Equally important, farmers will have their reputations restored as stewards of our land, while enjoying more secure incomes and continuing public support.

For an explanation of the current law in England and how it relates to the creation of a right to roam ([see here](#)).

Access to nature and right to roam in England (Right to Roam Event 23 Sept 2023)

Access to nature should be a fundamental human right, recognised by the United Nations and applicable in all countries. In recent times the importance of the enjoyment of nature, from city centre to mountain summit, was evident as citizens suffered under the access restrictions imposed during the Covid pandemic. It is therefore very good that the UK Government has a clear policy commitment to ensure that all citizens, at home, work or anywhere else, should be no more than 15 minutes from a place where they can experience nature. To meet this commitment in England, however, it is essential that three things happen.

Firstly, path networks need to be safeguarded. This means that present time limits on the development of England's rights of way network need to be removed. Path networks are evolving facilities, to meet both present and future needs. Their historic foundations should not be lost or ignored.

Secondly, new public subsidy arrangements to support agriculture and forestry are under development in all nations of the UK. These should be supportive of public access to our land and water and, where land owners are obstructive towards public access, their subsidy payments should be suspended or terminated.

Finally, in England, the policy and legislative framework for public access needs to be strengthened. Everybody needs to feel confident in stepping off the path to explore along the hedgerow or river bank, or wander through woodland or across moorland and mountain.

I can see no difficulty in adopting the terms of Scotland's right to roam legislation and outdoor access code to meet these three requirements in England and the draft Bill before you today is an excellent foundation. It should bring huge benefit not only to those who want to enjoy the outdoors but also to those who manage our land and water and in so doing depend on public support.

The most important aspect of the Scottish legislation is the confidence that it has given citizens to exercise their rights over land and water, in a responsible way, and the guidance that it has provided to land managers in meeting their obligations to respect access rights. The operation of this legislation over 20 years has not led to any substantive demands for changes to the Act or the Scottish Outdoor Access Code.

Of course there have been a few problems. Several court cases have tested the balance between public and private interest, but with outcomes that have generally been satisfactory from the public's point of view. Most problems have arisen where local access authorities have been slow to remove obstructions or sluggish in the development of path networks. Our core path system is far less comprehensive than England's rights of way network but this will improve over time, especially with the Scottish Government's increasing commitment of financial resources in support of active travel.

I spent the early part of my working life in the Cairngorms area as a scientific and policy officer with a government body, the Nature Conservancy Council (NCC). That area contains more designated land for nature conservation than any other part of the UK and it is also subject to intense recreational pressure in some parts of what is now the UK's largest national park. So I learnt a lot about the interface between nature conservation sensitivities and outdoor recreation.

Before going to Aviemore my school and university days were spent in various parts of England and Wales. I walked and cycled wherever I wanted, never constrained by any ideas of 'trespass' or other unreasonable forms of restriction. But in 1985 I transferred from my NCC base in Aviemore to the NCC England headquarters in Peterborough. Part of my role there was to develop, in cooperation with officials in the Ministry of Agriculture, the first attempts in the UK to develop environmentally sensitive farming systems. As we visited many different parts of England, trying to design funding arrangements that would help farmers, wherever they were located, to become environmentally sensitive farmers, I became aware of a strange situation. The freedom that I had enjoyed in my youth to explore the countryside was being eroded in the face of increased intensification of agriculture and exclusive, aggressive attitudes from some land owners. One farmer accused me of being a potential sheep rustler and told me to get back onto the right of way half a mile away from the stream side where I was walking. My mates and I had walked and fished in that stream in my primary school days, without any problem. So the fundamental purpose of the legislative proposals for England that are before you today is to secure that 'freedom' to enjoy our land and water as a 'right' which is protected in law and, where necessary, defended through court process.

Although land use practices and attitudes have changed in all parts of the UK in recent decades the legal basis for accessing land and water has not changed. Committees of the UK Parliament, in the 1950's, clarified that the basis on which most people take access to land and water is by the perfectly sound legal principle of 'implied consent', subject to the 'tolerance' of the land owner. That tolerance has been evaporating in recent times and this process needs to be corrected by establishing a right to roam over most land and water in England. And while we might have to wait a few years for the necessary legislation to pass through the UK parliament, we must put pressure on the present government. They, at least, must ensure that most land owners in England accept the need to tolerate public access across their land and water. If not, their public subsidy should disappear overnight.

I left Peterborough in 1989 and joined the Ramblers in Scotland. So I was able to play a part, over the next 25 years, in the initiation, establishment and implementation of our right to roam legislation. Perhaps I can finish with a wee example of right to roam in action in Scotland. One day, nearly 4 years ago, I was sitting in the middle of a hill track in the Cairngorms. I was trying to fix the broken chain on my new electric mountain bike. Two police officers were standing nearby. One stepped forward and produced a splendid multi-tool from his pocket and joined me in the repair job. As we struggled with my oily chain Princess Anne walked by with her husband and two dogs. She made no objection to my presence and simply commented that I appeared to be receiving a better bike repair service than when members of the royal family suffered bicycle malfunctions. Yes, this was Balmoral estate, where right to roam applies to most of the land and water, except for the formal gardens close to the castle. So, if King Charles is happy to support right to roam on his land, from the banks of the River Dee to the summit of Lochnagar, there is every reason why every other landowner in every part of the UK should be equally supportive of the right to roam.

Thank you and good luck.

Category

1. Access rights

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