

Community Empowerment (Scotland) Bill

Response from Ramblers Scotland and Sustrans Scotland

24 January 2014

Ramblers Scotland is the representative body for walkers in Scotland and recognised by **sportscotland** as a governing body of sport. Our charitable aims include the promotion of walking, securing and facilitating public access to land and helping to protect the natural beauty of the countryside. We work with local communities in all parts of Scotland to help deliver these public benefits.

Sustrans is a leading UK charity enabling people to travel by foot, bike or public transport for more of the journeys we make every day. We work with families, communities, policy-makers and partner organisations so that people are able to choose healthier, cleaner and cheaper journeys, with better places and spaces to move through and live in. Sustrans Scotland is involved with path developments throughout the country, from small scale links to longer routes.

Summary

This is a joint submission to the consultation on the Community Empowerment (Scotland) Bill from Ramblers Scotland and Sustrans Scotland. Our comments relate specifically to addressing the difficulties that can arise when developing path networks across Scotland. We are restricting our response to specific questions in this consultation as below, which we understand correspond to the Scottish Government's priorities as expressed in para 55 of the consultation document.

One reason why new paths are slow to be developed is the time spent in negotiating routes with individual landowners, and the reluctance of local authorities to use the powers they already have, such as Compulsory Purchase Powers and Path Orders under s.22 of the Land Reform (Scotland) Act 2003. In the past 10 years, no s.22 orders have been served in Scotland. Such powers may only be required to deal with a single landowner along a path route, with all the other landowners working satisfactorily with the local authority to deliver the new path. Such projects should not be thwarted by the attitude or actions of a single uncooperative landowner.

We believe this situation could be resolved by an extension of this Bill to encompass a community right to buy which includes the right to buy strips of land for paths in both rural and urban areas. The community in this case would be a 'community of interest' which could be a national NGO which is recognised by the Scottish Parliament as a relevant organisation for the purposes of community right to buy. We also call for compulsory purchase powers to be extended to this NGO community of interest.

The case for extending Scotland's path network

The Scottish Government is committed to increasing levels of physical activity for the Scottish population, through its National Outcomes to increase the number of people enjoying the outdoors, and to increase physical activity levels, and other strategies such as the Cycling Action Plan for

Scotland, the forthcoming National Walking Strategy and the plans for physical activity legacy benefits from the 2014 Glasgow Commonwealth Games.

Scotland has world-renowned statutory rights of access, established through the Land Reform (Scotland) Act 2003, one of the major achievements of the Scottish Parliament in its first term. Most people access the outdoors by the use of paths, and these paths are particularly relevant for encouraging less active people to take exercise, for use around urban areas, and for short trips to be undertaken by active modes of travel.

Yet Scotland's path density has always been much lower than in the rest of Great Britain and, indeed, than in much of Europe. This is partly because Scotland's right of way network was never legally protected in the same way as in England and Wales where paths have been recorded on definitive maps since 1949. This has meant that Scotland's own network of rights of way has been eroded over the years through, for example, field expansion and urban development.

Currently England has 117,000 miles of recorded rights of way and Wales has 20,750 miles. In Scotland, the Land Reform Act aimed to start the process of mapping and extending the path network through core paths planning, which involved widespread community engagement across all local authority and national park authority areas. The core paths planning process has brought limited success, in that while around 12,250 miles of core paths have been mapped, less than 5% are paths which did not exist beforehand and therefore the overall path network has not hugely expanded as a result.¹ In addition, while there is a statutory duty on access authorities to identify and promote the routes, it does not include maintaining or developing core paths. Since core paths are the priority for development for most access authorities, it suggests that the wider path network is even less likely to be improved or extended. Often, new paths are very slow to be developed due to the length of time spent in negotiating routes with individual landowners, and the reluctance of local authorities to use the powers they already have, such as Compulsory Purchase Powers and Path Orders under s.22 of the Land Reform (Scotland) Act 2003. In the past 10 years, no s.22 orders have been served in Scotland.

In many local authority areas, the core path network includes the National Cycle Network, a key aspect of Sustrans' work in Scotland, and which currently extends to around 2,000 miles. We also expect Ramblers Scotland to have an increased involvement in the development of the core path network as a consequence of the publication of the National Walking Strategy later this year. Sustrans is also developing Community Links projects in Scotland which identify short links between communities to prioritise active travel and outdoor recreation opportunities between these places. Ramblers Scotland actively promotes these links.

The vast majority of paths are currently created through partnerships between, for example, planning authorities, local community groups and NGOs. However, given that paths often pass through a variety of different landholdings, negotiations can take time in order to secure agreement from all parties along the route. Sometimes this can take many years, during which time-limited funding opportunities are lost or competing developments might come forward along the route of the path. There are a range of options for negotiation, from compensation being paid to the landowner, to leasing arrangements, to the landowner making a gift of the land for the purpose of the project. However, lack of cooperation from one landowner can jeopardise the entire route, or lead to it being diverted on to a more circuitous route or on to a public road for a short section, which can discourage use of the path by many people.

We are aware that road projects routinely begin with the serving of compulsory purchase orders along the designated route, and yet paths rarely gain the same high level of support from local authorities, despite usually being identified through a rigorous process of public consultation, and having evidence to show the wide public benefit and/or national significance of that path being built. Currently, compulsory purchase powers cannot be used if an alternative route can be found, and for

¹ SNH http://www.snh.org.uk/pdfs/publications/commissioned_reports/427.pdf

walking/cycling routes there will always be an alternative even if it is far longer or on a steep gradient which will result in lower levels of usage of the path once built. We believe that if a development is of significant public interest, it should be possible to override individual property rights where privacy, security or economic rights are not pressing, and path construction on the proposed route should be allowed to proceed. The tools available and willingness to use them should be no less for paths as they are for roads. Both deliver vital public benefits.

We therefore are calling for an extension of this Bill to encompass a community right to buy which includes the right to buy strips of land for paths in both rural and urban areas. The community in this case would be a 'community of interest' which could be a national NGO which is recognised as a relevant organisation for the purposes of community right to buy. We also call for compulsory purchase powers to be extended to this NGO community of interest.

Relevant NGOs would be recognised in a statutory instrument approved by the Scottish Parliament. In proceeding with an NGO CPO, the NGO would be required to consult with the relevant community council, the local and national park authority (if relevant) and the Scottish Government, to ensure that there were no objections from any of these bodies to an NGO CPO.

It should be noted that there may be situations where members of a local community are supportive of an NGO CPO but are reluctant to express such support in public because the uncooperative landowner has a powerful influence over many aspects of local community life. In such situations it is preferable to simply seek a 'no objection' view from the local community at the point of seeking an NGO CPO. This does not preclude the NGO entering into a partnership arrangement with the local community in securing the path, if the local community prefers this or, at a later date, for the NGO to transfer ownership to the local community if that was desirable.

A wide range of benefits accrue to society through the existence of path networks. This can be briefly summarised below as:

Economic benefits – there is a growing body of evidence of the economic benefits brought to communities, especially in rural areas, of outdoor recreation and specifically path networks. This benefit may take the form of economic regeneration, as in the case of the Loch Leven Heritage Trail in Perth & Kinross which was opened in 2009 and now receives over a quarter of a million visitors each year. A 2011 report by the local paths group, TRACKS, estimates that almost £1.5m is spent in local businesses by users of the path. Likewise a report in 2006 estimated that the Fife Coastal Path generated £24-29m expenditure in local businesses each year, and supported 800-900 FTE jobs. In addition, significant job creation opportunities arise from path construction, especially for small civil engineering contractors and small farmers who can benefit from spending on maintenance of existing paths in remote areas. Tourism is a major industry in Scotland with nature-based tourism estimated at contributing £1.4bn to the Scottish economy². Within this study, walking tourism was valued at £533m/year, while a recent report by Transform Scotland³ estimated the value of cycle tourism in Scotland at £239m per year.

Health benefits – just 39% of Scottish adults meet minimum recommended levels of physical activity, yet there is growing evidence of the massive health benefits which arise from regular exercise, particularly in relation to heart disease, some cancers, type 2 diabetes, and as a means of tackling obesity. Paths help people to make simple lifestyle changes, encouraging higher levels of walking and cycling for everyday journeys and for leisure.

Environmental benefits – shifting transport modes from private car use to active travel can lead to a reduction in climate change emissions, as well as improving air and noise pollution levels. People will not choose to walk or cycle if there are not safe, pleasant paths for them to use.

² Valuing Nature Based Tourism, Scottish Natural Heritage 2010, <http://www.snh.gov.uk/docs/B720765.pdf>

³ The Value of Cycle Tourism to Scotland, Transform Scotland 2013, <http://www.transformscotland.org.uk>

Community benefits – there is growing evidence that communities which are accessible on foot/by bicycle are more pleasant and more sought after as places to live. People are more likely to walk or cycle for everyday journeys if they are connected to schools, workplaces and local services by safe active travel routes.

Research undertaken in 2012 on the National Cycle Network (NCN)⁴ in Scotland has shown:

- The present value of the mean annual benefit attributable to walking and cycling on the NCN is estimated to be £23.2 million for walking and £48.3 million for cycling trips using the World Health Organisation's Health Economic Assessment Tool (HEAT).
- Estimates of the benefit to cost ratios (BCR) at the Community Links sites analysed indicate a range of BCRs from 2:1 to 9.5:1.
- An estimated 17.3 FTE jobs have been sustained through the creation of the Community Links routes.
- Environmental benefits are shown through a reduction in greenhouse gases demonstrated at Community Links and NCN sites analysed with Stockingfield Junction, Glasgow showing a reduction of 28 tonnes of greenhouse gases. Based on average car emissions the potential carbon dioxide saving of the journeys on the NCN was 115,009 tonnes.

Despite the many benefits that accrue to society from path development, many developers experience difficulties in getting new paths on the ground. Some examples of problems faced by Sustrans over recent years are outlined below to illustrate the kind of problems which have arisen:

Example 1

Issues have arisen with the development of National Cycle Route 78 in Argyll. Sustrans wanted to acquire a stretch of privately owned trunk road verge land but this did not occur due to the landowner not wishing to even broach the subject of land acquisition. This led to this section of the route not being developed, despite considerable time, effort and money being spent on it.

Example 2

In the Aboyne area, a landowner put up two obstructions on a path in order to prevent access – a large corrugated fence (which can only be climbed over by the fit and unencumbered) and a deep trench filled with water (which is only passable by wading through the water). The Local Authority is now considering an alternative route for people to use despite it being longer and less convenient.

Example 3

Sustrans was seeking to create a new section of cycle route between major settlements in and around the Scottish Borders area. The alignment of the route would have used disused railway line for almost all of its length, thereby removing cyclists and walkers from the main trunk road which runs parallel to the disused railway line. Much of the disused railway line had been disposed of to neighbouring farms and residential properties.

Sustrans had successfully negotiated with each of the landowners (10+ landowners involved) to agree the broad principles of allowing a shared use route to be created. Two landowners at one end of the scheme nearest the main town, one a residential property owner and one an agricultural owner, refused to discuss even the possibility of allowing the construction of the route regardless of the various attempts made by Sustrans. As these are key landowners closest to the centre of population, without access to these sections of land, the remainder of the route is essentially invalid as it is not accessible from the town. Sustrans still aspires to create this valuable route to serve these towns and outlying communities, but without being able to gain access to these vital sections of route, there is little scope for progress in the foreseeable future.

⁴ Walking and Cycling Outcomes Report, Sustrans Scotland 2013, http://www.sustrans.org.uk/sites/default/files/images/files/scotland/News/Sustrans_Scotland_walking_and_cycling_outcomes_report_September_2013.pdf

Answers to specific consultation questions

Q 17. The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal, and are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

We agree that the right to buy should extend to communities in all parts of Scotland. We would like to suggest that the definition of community is also extended in certain circumstances to include so-called 'communities of interest' who can play a representative role in developing local initiatives. In the case of path development, paths can run across many miles which precludes a single geographic community being able to register interest in the land. National organisations like the Ramblers and Sustrans, often in partnership with geographically-based, constituted community groups can come together to form a 'community of interest' for a specific purpose, ie, to work with the local authority to develop that path. The experience and expertise of the national NGO, combined with the local knowledge and understanding of the local group (or groups), working in partnership with the local authority can provide the best possible alliance to establish a new path.

We envisage that this 'NGO community of interest' would register interest in the land along the route of the proposed path. While this land may not ultimately need to be purchased, it would give the path developers a huge advantage in negotiations with landowners along the route to have that option, especially combined with compulsory purchase powers as outlined below. Public accountability would come from the 'no objection' requirement from the relevant public bodies or the fact that the vast majority of path development is already undertaken under the auspices of the local authority or national park authority, with appropriate local consultation already having taken place. We recommend there is a requirement for a formal agreement to be drawn up with the planning authority for any path development in order for an interest in the land to be registered, and there should be agreed tests to determine sufficient public benefit outcomes from the project.

Q 18. Do you think that Ministers should have the power to extend "registrable land" to cover land that is currently not included as "registrable land"? What other land should also be considered as being "registrable"?

As outlined above, we believe land which the local authority has proposed as the route of a new (or improved) path should be eligible to be considered as land on which a community interest can be registered.

Q 19. Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? What should these circumstances be?

This submission makes the case for compulsory purchase powers to be given to 'NGO communities of interest' (national NGOs recognised in statutory instrument). Given the failure of local authorities to use existing compulsory purchase powers, or path orders, we believe negotiations for new routes would be massively speeded up by NGO communities of interest having these powers to use, usually as a last resort. However, the proposed routes are not always going to be neglected or abandoned land but could be a designated strip of land, for example separated from the main carriageway of a trunk road or along the route of a disused railway line.

Q 20. How do you think this should work in practice? How do you think that the terms "neglected" and "abandoned" should be defined?

We envisage that once public consultation processes have concluded and demonstrated the public interest and benefits to be gained from a particular path development, the proposers of the route (the 'NGO community of interest', sometimes in partnership with the local community and/or local

authority) would apply for a right to purchase the land along the route of this path in principle. Negotiations would then take place with successive landowners, and the compulsory purchase of a part of the route would only take place as a last resort in the case of an intransigent landowner.

Q 32. Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Q 33. Are there any other ways that a “community” could be identified?

Q 36. What other legal entities should be able to apply under the community right to buy provisions – and why?

As outlined above, we believe national NGO communities of interest can be established through statutory instrument to help implement this legislation. In most situations such NGO communities of interest would work in partnership with local public bodies to develop the path.

We believe appropriate national NGOs should be able to apply under the community right to buy legislation to be recognised in statutory instrument as relevant organisations for the implementation of NGO right to buy.

Contact Details

Helen Todd
Campaigns & Policy Manager
Ramblers Scotland
Kingfisher House, Auld Mart Business Park, Milnathort, Kinross KY13 9DA
Tel: 01577 861222
Mob: 07733 118289
helen.todd@ramblers.org.uk
www.ramblers.org.uk/scotland

Janice Fenny
Policy and Media Advisor
Sustrans Scotland
Rosebery House, 9 Haymarket Terrace, Edinburgh, EH12 5EZ
Tel: 0131 346 3010
Mob: 07827957123
Janice.fenny@sustrans.org.uk
www.sustrans.org.uk

© Ramblers Scotland / Sustrans Scotland January 2014

The Ramblers' Association is a registered charity England & Wales no 1093577, Scotland no SC039799) and a company limited by guarantee, registered in England & Wales (no 4458492).

Sustrans Registered Charity No. 326550 (England and Wales) SC039263 (Scotland)
VAT Registration No. 416740656