

## EAST AYRSHIRE COUNCIL

### COMMUNITY SERVICES COMMITTEE - 28 MAY 2003

#### EAST AYRSHIRE RESPONSE TO THE SCOTTISH OUTDOOR ACCESS CODE

##### Report by Director of Community Services

#### 1. PURPOSE OF REPORT

- 1.1 To request the Committee to consider and, if acceptable, adopt the proposals in the draft Scottish Outdoor Access Code.

#### 2. BACKGROUND

- 2.1. The Land Reform Act (Scotland) 2003 established statutory access rights. The job of the Scottish Outdoor Access Code is to provide a detailed reference on access rights and responsibilities.
- 2.2 East Ayrshire Council has been consulted by Scottish Natural Heritage on the proposed Scottish Outdoor Access Code.

#### 3. DISCUSSION

- 3.1 In January 2003 the Land Reform Act (Scotland) was passed and received Royal Assent in February.
- 3.2 Scottish Natural Heritage must now hold a consultation on the Scottish Outdoor Access Code. Parliament has urged that this consultation is made as wide as possible.
- 3.3 The Land Reform ( Scotland ) Act 2003 will not give any statutory access rights until the Scottish Parliament has given approval to the final code.
- 3.4 The main points of the Scottish Outdoor Access Code are:-

##### **Local Authorities must -**

- Set up a local access forum;
- Prepare a core path plan for their areas;
- Uphold the access rights;
- Publicise the Code (working with Scottish Natural Heritage)

##### **Local Authorities have powers to -**

- Remove obstructions;
- Divert and close paths;
- Provide recreational facilities, including paths;
- Maintain paths;
- Provide ranger services;
- Introduce management and rules and byelaws;

- Introduce orders to exclude certain land from access rights for specified periods;
- Acquire land or water to help people exercise access rights.

### 3.8 East Ayrshire Outdoor Access Forum.

The East Ayrshire Outdoor Access Forum has been established. To date seven forums have been held at different locations within the authority. A proposed structure has been put to the Forum with a Core Group and six Local Action Groups. The Core Group will be made up of representatives from Public Agencies, None Governmental Agencies, Land Managers, User Groups and a representative from the Local Action Groups.

## 4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications related to the consultation of the Scottish Outdoor Access Code.

## 5. LEGAL AUTHORITY/IMPLICATIONS.

5.1 The completion of the response to the Scottish Outdoor Access Code will fulfill part of the Council's obligations and responsibilities outlined in the Land Reform (Scotland) Act 2003.

## 6. POLICY IMPLICATIONS

6.1 Nil.

## 7. CONCLUSIONS

7.1 The Scottish Outdoor access Code will underpin the development of outdoor access in East Ayrshire.

## 8. RECOMMENDATIONS

8.1 It is recommended that the Committee:-

- (i) consider and approve, if acceptable, the comments attached as Appendix 1 on the response to the consultation paper;
- (ii) remit to the Director of Community Services to forward an appropriate reply to Scottish Natural Heritage; and
- (ii) otherwise note the content of this report.

William Stafford  
Director of Community Services

WS/ASM/CM

1 May 2003

## **LIST OF BACKGROUND PAPERS**

1. East Ayrshire Outdoor Access Strategy
2. Reports to Community Services Committee – Countryside/Outdoor Access Unit on 6<sup>th</sup> February 2002, 19<sup>th</sup> September 2001, and 7<sup>th</sup> February 2001
3. Copies of the Scottish Outdoor Access Code. A consultation on a draft Scottish Outdoor Code

Any person wishing to inspect the background papers listed above should telephone 01563 576264 and ask for John Griffiths, Head of Leisure Services.

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Scottish Outdoor Access Code

Comments on Consultation draft

Key issues for consultation

Appendix 1

5.1

General Issues

**Code adequately covers all the issues in the code.**

Specific Issues

1. We would welcome any ideas on how we can balance the need to cover all key issues in sufficient detail with the length of the code.

**Adequately covered**

2. We would welcome any ideas on what sort of short summary of the Code you would find useful and what its content should be.

**A leaflet would be adequate giving a summary of responsible behaviour, pages 47-51; guidelines for land managers may also be valuable reference point (Pgs 40-45).**

3. Do you find these key principles helpful in thinking about what responsible behaviour means?

**Advantageous to have principles reiterated.**

4. The role and status of the Code is determined by the Land Reform (Scotland) Act 2003. Do you think it is clearly explained in this introduction?

**Yes**

5. The extent of access rights is determined by the Land Reform (Scotland) Act 2003. Do you think that this section of the code summarises access rights accurately and is the interpretation within the Code understandable and easy to follow?

- 1. Yes, but para 2.2 introduces the concept of core paths without defining what these are. Para 2.17 defines paying visitor attractions being excluded from access rights under the Code. Could other landowners establish 'attractions'**

**to deny access. The Code is not clear as to the status of existing public rights of way within areas of visitor attractions. Do rights of way have primacy in these situations? Clarification is required.**

2. 2.4 page 22, summary of access rights, access rights do not apply to: should include in addition to working sites, opencast coal mines; open cast mines would fall within definition “*working quarries and other surface workings*” (Pt 14, Pg 26)
6. A key role of the code is to show the point at which behaviour is or is not responsible. Is the test of responsible behaviour – unreasonable interference in the form of damage or disturbance causing harm or loss - set too low or too high, or is it about right?

**Considered that it is set about right. 3.9 Highlights an individual must take responsibility for their own actions and that the countryside should not and cannot be made hazard free.**

7. Do you think the guidance emphasises enough that the countryside cannot be made hazard-free and that people should be responsible for their own actions?

**As above.**

8. Does the Code strike a sensible balance between the needs of people exercising access rights and the need to give people reasonable measures of privacy and peace in their own home? If you think that the Code does not strike a sensible balance, please explain why?

**The Code does not make a convincing definition of privacy. Define curtilage, a specified distance if no feature boundary exists. No reference to First Protocol (Protection of Property) i.e. entitled to peaceful enjoyment of possessions.**

9. If you think that reasonable needs for privacy can only be respected by keeping a certain distance from any house, what distance would you recommend and why?

**If a large isolated residence with no definite boundary, then 10 metres would be an acceptable distance. This is the advisory distance given by the DNT in Norway. Reasonable and allows for privacy, security and reduces noise disturbance.**

10. Does the guidance strike a sensible and workable balance between the interests of those exercising access rights and those working in farmyards?

**No. A farm yard is working and dangerous environment and should be outwith access rights. Safe routes should be established around the farm yard.**

11. Do you think that the guidance provided on access over land where land management work is under way is sensible and workable on the ground? If you don't, please explain why?

**Yes, clear and understandable. Though any signs up referring to the management work should be clearly dated.**

12. Do you think the Code strikes the right balance between people being able to exercise access rights responsibly and ensuring that any risks to animal health are minimised? If you don't, please explain why.

**Should include mares with foals. Code gives clear guidelines; extend to include other livestock, particularly with young i.e. deer, fowl etc.**

13. Do you think that the guidance in the Code strikes a reasonable balance between people exercising access rights through fields and the interests of land managers? If you don't, please explain why.

**Yes, clear guidance.**

**The protection of the natural/built heritage in the countryside is a prime concern in relation to the new Code. Para 3.33 states that 'by staying well back from wild animals or taking a different line you can help avoid disturbing them.' This assumes you know where they are and can take avoiding action. It also raises the general question about public access on statutory and non-statutory nature conservation/built heritage sites and public knowledge of such areas of value. The level of public care and responsibility sought in such areas is heavily dependent on specialised local knowledge which general public is unlikely to have. The Code does not seem to address this particular issue at all. Core footpaths and existing rights of way would I suggest have a particular role in discouraging general roaming in such sensitive areas and many of which are in remote locations.**

14. The Code stresses the need to take care whilst enjoying the natural and cultural heritage. Do you think the guidance strikes a fair balance between protecting this resource and encouraging people to enjoy and appreciate it? If you don't think that the balance is fair, please explain why.

**Dogs could be excluded from identified wild life sites. Depending on local management rules. Possibly highlight particularly sensitive environments / habitats with appropriate signage/warnings.**

15. Dogs can be an emotive issue. The code defines ‘under proper control’ in several ways, including not taking dogs into some type of field. Do you think that the responsibilities placed on dog owners are about right? It would help us if you could let us know in your response if you own a dog.

**Dogs could be kept off wildlife sites and certain fields. Otherwise the code gives good guidelines.**

16. Do you think the guidance for the organisers of groups and events, particularly the distinction between when to talk to land managers and when to obtain their permission, is reasonable? If you don't, please explain why.

**Yes. Most events that could lead to potential conflicts of interest in the countryside require to be licensed in any case. More regular events, over several days/weeks per year could also require the benefits of planning permission.**

17. A key role of the Code is to show the point at which behaviour is or is not responsible. Is the test of responsible behaviour for land managers – people being prevented or discouraged from exercising access rights, or whether actions are unreasonable – set too low or too high, or is it about right?

**Adequately covered.**

18. Do you think that the list of examples of what might be deemed an unreasonable obstruction is reasonable or too long, or would you like to suggest other examples?

**Landowners responsibility to remove fallen trees from a recognised route. Other than a CPN.**

19. Do you think that the guidance strikes the right balance between the obligations that land managers have under other laws, the obligations that they have under the Land Reform (Scotland) Act 2003 and the needs of people exercising access rights? If not, it would help us if you could explain where the balance is wrong, and why.

**Right balance.**

20. Do you think that the guidance provides sufficient encouragement and guidance for action by land managers to help people exercise access rights responsibly?

**Sufficient guidance.**

21. Do you think that section 5 provides clear, sensible and practicable guidance to those exercising access rights and to land managers? If you think it could be improved, please tell us in what way.

**Paths tracks may not be suitable to all users i.e. cyclists and horse riders, as their activity could cause long term or irreparable damage. Users should give consideration as to the damage to a surface that they may cause. On some routes barriers may have to be erected that will restrict the access to pedestrians as to open it up for cyclists and horse riders will also allow illegal use by trail and quad bikes.**

22. Can you think of any other situations that might be regularly encountered which should be included in the table?

**No**

23. Do you find the advice in Section 6 useful?

**LAs will need to identify the appropriate department/officer who will have responsibility for any issues raised by the code.**

24. Is the guidance for dealing with irresponsible behaviour sensible and realistic? If not, please say why.

**Paragraph 6.3 is naïve in the extreme. Its suggested actions could potentially place any apprehending land manager in physical danger. Are we to expect that any irresponsible person would give their name and address to the land manager and wait around for a Council Officer to confirm the loss of their access rights? How is evidence to be obtained about such confrontations where no official or third party is present? I cannot see from this section how practical effective sanction can be made under most circumstances under the Code against those individuals exhibiting irresponsible behaviour while exercising their access rights.**

**Many occasions may be a police matter.**