

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 24 APRIL 2001

A DRAFT SCOTTISH OUTDOOR ACCESS CODE

Report by Director of Development Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to make comments on the Draft Scottish Outdoor Access Code in relation to its planning implications. The Scottish Executive is requiring these comments by 18 May 2001.

2. BACKGROUND

2.1 In October 1997 the Government invited Scottish Natural Heritage (SNH) to review the legal arrangements for access to the Countryside and to make recommendations. SNH decided to involve the Access Forum in this exercise.

2.2 In December 1998, following extensive consultation, SNH submitted its advice that there should be a right of responsible access to all land and inland water in Scotland for the purposes of informal recreation and passage. SNH recognised the need for measures to protect privacy and to safeguard legitimate land management and nature conservation interests. The then Secretary of State, in February 1999, accepted the SNH advice as a basis on which to prepare draft legislation. He asked SNH to draft a Code providing guidance on responsible behaviour by those exercising the new right and on the part of land managers. SNH again decided to involve the Access Forum in the drafting of this Code that is now known as the Scottish Outdoor Access Code.

2.3 The operational aspects of the above draft Scottish Outdoor Access Code have been addressed by the Head of Leisure Services in his report to the Community Services Committee on 07 February 2001 in terms of potentially setting up a Countryside Access Unit.

3. MAIN PROVISIONS OF DRAFT SCOTTISH OUTDOOR ACCESS CODE

3.1 The above Code explains the rights and responsibilities relating to public access to the outdoors enshrined in the Draft Land Reform (Scotland) Bill. The main provisions are,

- Anyone can exercise the right of access to land for the purposes of recreation or to cross that land.

- The above right of access does not extend to motorised forms of recreation or use of motorised vehicles to reach areas used for recreation.
- Property is exempt from public right of access unless there is an existing statutory right of way through any part of the property.
- The Code sets out the responsibilities of the public, land managers and public bodies in respect of the proposed access legislation.

4. MAIN COUNCIL RESPONSIBILITIES UNDER THE DRAFT CODE

4.1 The draft Code gives local authorities a wide range of new duties and powers. The Council must:-

- recognise, accommodate and protect the right of access;
- establish at least one local access forum to achieve complete coverage of their areas;
- identify and establish a core path network for the Council area and to maintain a public record of this;
- ensure that its core path network is well-defined, accessible, protected and managed (this term includes regular maintenance);
- plan for and facilitate access.

4.1 The Planning and Building Control Division will have an input to the Access Steering Group, chaired by the Head of Leisure Services, in developing access strategies for East Ayrshire that will take account of the policies within the East Ayrshire Finalised Local Plan and, where relevant, the Council's Local Transport Strategy.

5. PLANNING IMPLICATIONS

5.1 The Policy and Projects Section will, through its participation in the Access Steering Group, have a role to play in ensuring that the provisions of policies in the East Ayrshire Finalised Local Plan are taken into account in promotion of the above priority actions by the proposed Countryside Access Unit.

5.2 The East Ayrshire Finalised Local Plan tourism, leisure and recreation, and transport policies already anticipate the requirements of the Draft Scottish Access Code through providing for the development of a definitive strategic and local footpath and cycleways network, with improved links between communities and to the national footpath and cycleway networks and the interpretation and signposting of areas of local historical, nature conservation and heritage interest.

5.3 The Draft Code refers to curtilages of rural properties being exempt from public access under the new legislation. The definition of what constitutes a curtilage is debatable and there are indirect planning implications for this in terms of possible deliberate extension of rural curtilages by landowners as a means of preventing public access.

5.4 There are potential planning implications regarding the identification of Core Path Networks through or adjacent to sensitive nature conservation sites where there may be no feasible alternative routes. The issue of identification and mapping of Core Path Networks will be addressed in a future report on rights of way to this Committee. Guidance from the Scottish Executive Rural Affairs Department will be required as an input to that report.

6. PERSONNEL AND LEGAL IMPLICATIONS

6.1 There are potentially considerable manpower implications, principally for the Legal Service, in dealing with the transfer from the existing system of public access to that proposed in the new draft legislation.

6.2 The Legal Service will be required to examine the status of existing rights of way under the new provisions.

6.3 The Draft Code will require the Council to make access agreements with landowners in respect of development of the Core Path Network for those routes, or parts of routes which are not presently public rights of way.

7. RECOMMENDATIONS

7.1 It is recommended that the Committee

- (i) notes the contents of this report;
- (ii) agrees that the Head of Planning and Building Control makes a formal response to the Scottish Executive Rural Affairs Department regarding the Draft Scottish Outdoor Access Code in terms of the contents of Sections 5 and 6 of this report and that
- (iii) seeks guidance from the Scottish Executive Rural Affairs Department to assist the Council in dealing with the right of way issues identified in Sections 5 and 6 of this report.

Stephen Chorley
Director of Development Services

17 April 2001
(JT/MMM)

LIST OF BACKGROUND PAPERS

1. Draft Scottish Outdoor Access Code
- Scottish Executive Rural Affairs Department (February 2001).
2. Report by Director of Community Services to Community Services Committee
- 07 February 2001: Countryside Access Unit.

Anyone wishing to inspect the above papers please contact Julian Thorp on 01563 576789.

Implementation Officer: Julian Thorp

AGENDA