

Green Party

Access to the Countryside

Policy



Contents

Executive Summary	3
1.0 Overview of Access to the Countryside	4
1.1 Ireland	4
1.2 Norway.....	4
1.3 Finland	5
1.4 Austria	5
1.4 Germany.....	5
1.5 United Kingdom.....	5
1.5.1 England and Wales	5
1.5.2 Scotland.....	6
2.0 Site Value Tax	6

Executive Summary

Land is perhaps the most important example of a ‘commons’¹, i.e. a ‘resource whose value is due to Nature and to the activities and demands of society, and not to the efforts or skill of individual people or organizations’. Other commons include the natural commons such as air and water as well as societal commons such as radio spectrum² and public road space. For green economists, such commons are shared resources, the bounty of nature and society, whose value should be shared. This includes responsible access by all to the countryside.

After reviewing what happens in other jurisdictions the following are the policy points which we Greens recommend:

1. Access to the Countryside in Ireland should follow the 2005 Scottish Model³ which encompasses 3 key principles.

Principle 1: Respect the interests of other people.

Acting with courtesy, consideration and awareness is very important. If you are exercising access rights, make sure that you respect the privacy, safety, and livelihoods of those living or working in the outdoors, and the needs of other people enjoying the outdoors. If you are a land manager, respect people’s use of the outdoors and their need for a safe and enjoyable visit.

Principle 2: Care for the environment.

If you are exercising access rights, look after the places you visit and enjoy, and leave the land as you find it. If you are a land manager, help maintain the natural and cultural features which make the outdoors attractive to visit and enjoy.

Principle 3: Take responsibility for your own actions.

If you are exercising access rights, remember that the outdoors cannot be made risk-free and act with care at all times for your own safety and that of others. If you are a land manager, act with care at all times for people’s safety.

2. Site Value Tax should be imposed on enclosed land which is not available under the Access to the Countryside code above. Site Value Tax should not be applied to unenclosed land i.e., land to which the public have access as long as they follow the Scottish Outdoor Access Code

¹ <https://en.wikipedia.org/wiki/Commons>

² https://en.wikipedia.org/wiki/Radio_spectrum

³ <https://www.outdooraccess-scotland.scot/sites/default/files/2018-05/Publication%202005%20-%20Scottish%20Outdoor%20Access%20Code.pdf>

– which we will edit and change to suit Irish purposes once this policy is passed.

1.0 Overview of Access to the Countryside

1.1 Ireland

Recreational users of the countryside in Ireland currently have access to:

- 1 National Parks
- 2 Coillte Forestry
- 3 Listed Public Rights of Way.
- 4 Urban Parks

Note on item 3: there are about 200 Rights of Way but, owing to a flaw in the Planning Laws, only 2 have full legal protection. We propose to work to amend current planning legislation to give fuller protections to the rights of way which we have.

In contrast to other European countries, walkers in the Irish landscapes have no legal rights to step onto private land, including rough grazing land. People doing so are liable to be asked to leave by landowners. The issue of insurance is one of the reasons that landowners are concerned about third parties having access to their land. The current protection in place for landowners is contained within the Occupier's Liability Act 1995⁴. The Occupier's Liability Act states that the occupier owes a duty not to deliberately injure the recreational user and not to act with reckless disregard for his or her safety. Accordingly, where recreational users suffer injury on their land, landowners are still open to the possibility of claims being made against them. In practice, the Courts have followed a common-sense approach, whereby the landowner can assume that those on private land for recreational purposes will understand the risk that is inherent in their activities, have regard to the nature of the terrain they are crossing, and take measures to ensure their own safety (Weir Rodgers v The S.F Trust Ltd.)⁵

There are a number of more progressive policies in operation across Europe.

1.2 Norway

The right to roam, also called the right of access ("allemannsretten") is a traditional right from ancient times, and from 1957 it has also been part of the Outdoor Recreation Act. You are free to enjoy the great outdoors, even on privately owned areas, as long as you pick up your rubbish and show respect for nature. It is also permissible to camp anywhere in the countryside, forests, or mountains, as long as one keeps at least 150 metres away from the nearest inhabited house or cabin⁶.

⁴ <http://www.irishstatutebook.ie/eli/1995/act/10/enacted/en/html>

⁵ https://en.wikipedia.org/wiki/Geraldine_Weir-Rodgers_v._SF_Trust_Ltd

⁶ <https://www.visitnorway.com/plan-your-trip/travel-tips-a-z/right-of-access/>

1.3 Finland

Everyman's rights refer to the possibility for everyone to use nature, regardless of who owns the land. They do not require the permission of the landowner. However, the exercise of the right of every man must not cause inconvenience or disturbance. Everyone is allowed to walk, ski, cycle, or horseback ride freely (except very near homes and other private buildings or through farm fields and nursery plantations which could easily be damaged), camp out temporarily a reasonable distance from homes, and use boats, swim, or bathe in inland waters and the sea⁴.

1.4 Austria

The right to roam in Austria, particularly in forests and mountainous areas, is called *Wegefreiheit*. Since 1975 the right to roam in forests is guaranteed by Federal law. In particular, walking, running, hiking, and resting are automatically allowed to the public in most forest areas. However, horse riding, bike riding, and camping are not, and may only be practised with the landowner's permission⁵.

1.4 Germany

In Germany, a limited right to roam, called *Jedermannsrecht*, is guaranteed by federal law. The Federal Nature Conservation Act, the Federal Forest Act and the Federal Water Management Act allow everyone access to open landscape, uncultivated land, forests, and water bodies, including cycling and horse-riding on tracks and paths. The right may be further regulated through state law⁷.

1.5 United Kingdom

The United Kingdom has the most similar legal framework to Ireland, in that both jurisdictions are common law jurisdictions. Furthermore, the two jurisdictions have a shared history. Having said this, the access to land differs even within the United Kingdom.

1.5.1 England and Wales

In England and Wales, apart from National Parks and Forestry Commission properties, one can only walk on:

1. The 225,000kms of public rights of way
2. 1.4 million hectares of rough grazing land

In addition, work is proceeding at a rapid pace to complete a coastal route of 4,345km around the entire coastline.

The English/Welsh experience implemented in an Irish context could encounter a major blockage in the recent Supreme Court decision in the *Lissadell* case (*Walsh & anor v Sligo County Council* |

⁷ https://en.wikipedia.org/wiki/Freedom_to_roam

[2013] IESC 48)⁸, which decided that only access routes that had been dedicated in writing by landowners could be listed as public rights of way. This constitutes a narrow and legally complex route to public access that places private ownership above all rights to land and nature. The effect of the Lissadell decision has had a negative impact on progress on the issue of public rights of way. County councils have slowed listing routes in spite of the mandatory obligation to so.

1.5.2 Scotland

In Scotland the relevant law, comprising the Land Reform (Scotland) Act 2003⁹ and the accompanying Scottish Outdoor Access Code¹⁰, gives people the right of responsible, non-motorised (includes non-motorised bicycles and horse riders) access to most land and inland water in Scotland and is underpinned by three basic principles which apply equally to access-takers and land managers:

- Take responsibility for your own actions
- Respect the interests of other people
- Care for the environment

Having non-motorised access to most land and inland water provides access for many recreational users, such as hikers, mountain bikers, horse riders and kayakers.

While initially the landowners/farmers were very opposed to the Law Reform (Scotland) Act, they realised after a few months that walkers walked where they had always walked along trails that did not impinge on their privacy or interfere with their agricultural activities.

As the Scottish model has been in force since 2005 and is successful, we consider that this model should be embraced in Ireland.

2.0 Site Value Tax

The current Green Party Site Value Tax policy proposes to include agricultural land in the Site Value Tax net.

While it is proposed to include agricultural land, the Green Party also believes that land used for nature conservation, community use, community services, recreation, and similar, should be zero-rated. Where access is allowed to the public, such as unenclosed forestry, this land can be considered similar to ‘commons’ and therefore should be zero-rated. This would incentivise agricultural landowners to allow access to their land for recreational users. Thus, it is proposed that all enclosed land (*i.e.*, fenced land to which land access is refused to the public) in Ireland will come under the Site Value Tax system. Commonage (namely a holding held by two or more persons in specified shares or jointly and originally purchased from the Irish Land Commission under the Purchase of land (Ireland) Act 1885¹¹ and Irish Land Act, 1903¹²) and land which is open

⁸ <https://www.bailii.org/ie/cases/IESC/2013/S48.html>

⁹ <https://www.legislation.gov.uk/asp/2003/2/contents>

¹⁰ <https://www.outdooraccess-scotland.scot/>

¹¹ <http://www.irishstatutebook.ie/eli/1885/act/73/enacted/en/print.html>

¹² <http://www.irishstatutebook.ie/eli/1903/act/37/enacted/en/print>

to the public at no cost for recreational, educational, or cultural use does not come under the Site Tax Value system.

The Green Party Site value tax policy recommends taxing enclosed Agricultural Land and not unenclosed agricultural land because of the benefits being afforded to all the population by having access to unenclosed agricultural land.

Furthermore, the Site Value Tax policy recommends taxing enclosed Agricultural Land in order to focus minds on whether the land is being used appropriately for food production, biodiversity protection, rewilding, native forestry etc.