Supplementary written submission from Malcolm Combe

I gave evidence to the Land Reform Bill on 7 September (in Portree) and submitted a response to the Call for Evidence prior to that (number 133 here - http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/%28133%29_Combe_Malcolm.pdf).

I appreciate I am after the deadline for comments on the Bill and that I had the opportunity to make oral representations on a number of matters. That notwithstanding, another thought has occurred to me in relation to something that was not specifically addressed at the oral evidence session I attended, namely the reforms contained in Part 9 of the Land Reform Bill on access rights.

I submit there may be a possibility of improving the dispute resolution processes in Part 1 of the Land Reform (Scotland) Act 2003. This is something I address in my recent Juridical Review article “Get off that land – non-owner regulation of access to land” (citation: 2014 Jur. Rev. 287).

In Part 9 of the Land Reform Bill, at clause 73, there is a reform to provide that court applications should be served on [purported] responsible access takers. That is a welcome development in relation to court actions, but what about lesser disputes that might not be within a court’s radar? Currently, the Access Code and the 2003 Act’s statutory scheme does not give a non-landowner access taker who meets another engaging in irresponsible access much of a chance to act, beyond: asking the access taker to modify their behaviour; contacting the police if what they are doing is criminal; and referring the matter to the sheriff.

The Land Reform Review Group suggested that arbitration may assist here, but perhaps another approach would be to promote Local Access Forums into a first instance decision maker. Local access forums already have a statutory role in relation to temporary access suspensions and byelaws, and they had a role in relation to core path planning, so they already have a degree of expertise on access matters, and they will almost certainly know the geographic area and customs of where they operate better than any potential arbitrator or indeed a sheriff. Under s.25, they can already bring that expertise to bear and give offers of assistance on matters relating to the exercise of access rights, so an expanded role may not be too difficult to envisage or indeed incorporate into the statutory scheme.

This is addressed in my Juridical Review article in more detail (at pages 314-316 of the article). I would be very happy to discuss this if anyone wished to do so.