

Countryside and Rights of Way Bill

The Countryside and Rights of Way Bill has passed the Commons and was given a second reading by the House of Lords on June 26. As Baroness Byford remarked, it is really three Bills in one. The first part confers the controversial right to roam. The second part tidies up the general law concerning rights of way. The third part gives greater protection to wildlife. I shall concentrate on the first part.

For the Government, Lord Whitty opened the debate. He said the access provisions do not, as some opponents have said, confer an unfettered right to roam. They are restricted to mountain, moor, heath and down, as well as existing common land. They apply only to persons on foot. A landowner will remain entirely free to farm, fence, improve or develop his land and will be under no obligation to facilitate or improve public access. Moreover he can exclude the public for up to 28 days a year, and more if the countryside bosses let him. So what are the landowners complaining about?

Baroness Byford was the first to tell him. For a start, said she, this part of the Bill shows the Government do not understand the country. Last year 18,000 farmers gave up in despair, and many more are hanging on by their fingernails. The Bill not only further reduces their already dwindling incomes, but also demands more of their time. It is, she said, overburdensome, heavy-handed, regulatory and impracticable. It makes insufficient allowance for land management techniques, especially management of heather moorland where grouse are bred. The Bill's 28 days of peace and quiet is wholly inadequate to accommodate birds' need for solitude during courtship, nesting and fledging.

Lord Brittan (formerly Sir Leon) criticised the fact that the right to roam is to be exercisable at night, as well as in the daytime. Given the rising level of rural crime and the number of isolated farmhouses surrounded by access land, the fears expressed about night-time access are, said he, neither unreasonable nor excessive. It is one thing to be allowed to walk at night on a known footpath; it is a completely different matter to be allowed access everywhere. The legitimate dawn birdwatcher can be catered for by the proposal that access should be permitted for one hour before sunrise and one hour after sunset. "As regards the people who are alleged to gain special pleasure from contemplating an unimpeded night sky, is it too much to ask them to do so from a footpath?"

Lord Moran reminisced: "At home in Wales, ramblers left the gates open on our small farm. Our cows got out and into a rocky river, where one of them damaged her leg. It took us seven hours to get them out of the river and back where they belonged. That evening I was not particularly enthusiastic about the right to roam. Nor was I a couple of weeks ago, when I came across a youth trying to cut down a small tree in our woods. He seemed quite unaware that there was anything wrong about that". Ramblers, added Lord Moran, do not put anything into the countryside, unlike farmers or the young volunteers who help the RSPB, the wildlife trusts and those in the British Trust for Conservation Volunteers. "When, during lambing, a farmer and his wife have to set their alarm clock to go off every two hours or need to sit up half the night to tend a sick cow, the ramblers are not there."

Then came Lord Denham on dogs. "Dogs are like children, in that we all know that everybody else's are disobedient and totally unreliable, whereas our own are perfect". More trouble between land managers and visitors arises from dogs than over anything else. But this Bill allows access to owners with dogs without leads at certain times of the year. "Surely a

complete ban is necessary; otherwise, people who innocently think they are obeying the rules may make a genuine mistake about the date. For the sake of avoiding acrimony, dogs on leads at all times is a small price to pay.”

Lord Denham had another worry. Landowners and farmers may find themselves victims of an ever-increasingly litigious society. “Putting one’s foot in a rabbit hole and breaking a leg may be covered, but slipping off a bridge over a stream, falling off a rotten fence or slipping on damp concrete - all these being man-made - may not be. The Peak Park agreements and by-laws rightly ensure that the people who enjoy access do so totally at their own risk.”

There will no right to compensation for this curtailment of property rights. Lawyers for the landowners are already leafing through the Human Rights Act literature.

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