
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: Procedures for Upholding and Managing Outdoor Access Rights

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Purpose

The purpose of this paper is to set out the procedures to be followed when using the enforcement and exemption powers that are conferred upon the National Park Authority under the Land Reform (Scotland) Act 2003.

Recommendations

That the Board:

- Note the duty placed on the Cairngorms National Park Authority to uphold access rights and the power that are available to enforce and manage access rights;
- Approve the delegation of responsibility for decision making in respect to Sections 14, 15 and 23 to the Head of Visitor Services and Recreation;
- Approve the delegation of responsibility for decision making in respect of Section 11 Orders (for exemption of land from access rights) of up to five days, to the Head of Visitor Services and Recreation;
- Note that the Board would take decisions on Section 11 Orders (for exemption of land from access rights) of between six days and two years; and
- Approve the procedures outlined in Annexes 1 to 3 as the basis for dealing with casework associated with upholding and managing access rights subject to review after 18 months.

Executive Summary

The Land Reform (Scotland) Act 2003 confers upon access authorities certain duties and powers to uphold and manage outdoor access rights. The distinction between a duty and a power is important – a “duty” must be carried out, while a “power” can be used if appropriate.

Section 13 gives the CNPA a duty to uphold access rights “to assert, protect, keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may be exercised”. The Park Authority may take such steps, as it considers expedient, including the pursuit of legal action.

This paper specifically considers procedures for sections 11, 14, 15 and 23 of the Act. The powers outlined below include measures to protect, enforce and, in the case of section 11, manage the exercise of access rights. Notwithstanding the new powers of the CNPA, it is expected that most access issues will be resolved without the need for enforcement action or

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recourse to legal measures. It is anticipated that in the early years of outdoor access rights, some land managers and users may not be fully aware of their new responsibilities and that much of the CNPA's work will involve raising awareness and understanding, and giving assistance with compliance.

The Local Outdoor Access Forum was consulted on this issue and their advice has been incorporated into this paper.

PROCEDURES FOR UPHOLDING AND MANAGING OUTDOOR ACCESS RIGHTS – FOR DECISION

Background

1. The Land Reform (Scotland) Act 2003 (“the Act”) received Royal Assent on 2 February 2003, and came into force in February 2005. Part 1 of the Act establishes statutory rights of responsible access on or over most land, including inland water. 5
2. Part 1 of the Act sets out the statutory duties, responsibilities and powers of access authorities in relation to the outdoor access rights. It places emphasis on the local management of outdoor access and, within National Parks, the Park Authority has the duties and powers exercised elsewhere by local authorities. ss
3. Guidance for local authorities and national park authorities has been issued by Scottish Ministers in accordance with powers conferred by Section 27 of the Act, and this was prepared in consultation with the Convention of Scottish Local Authorities (CoSLA) and Scottish Natural Heritage.

Overview of the duties of the National Park Authority under the Act

4. The Cairngorms National Park Authority has four duties under the Land Reform Act 2003 as outlined below:

Upholding access rights

5. Section 13 places a duty on the National Park Authority to uphold access rights, which entails “asserting, protecting, keeping open and free from obstruction any route, waterway or other means by which access may reasonably be exercised”. The duty applies to all land over which access rights may be exercised, not only core paths. In carrying out this duty the Park Authority has powers to institute and defend legal proceedings and a general power to take such measures as they think appropriate. Fuller discussion of the **powers** conferred on the Authority to fulfil this duty is contained in the next part of this paper.

The Scottish Outdoor Access Code

6. Section 10 imposes a duty on the Park Authority to publicise the Code.

Core Paths Plan

7. Section 17 places a duty on the Park Authority to draw up a plan, within three years, for a system of core paths sufficient to provide reasonable public access throughout its area.

Local Access Forums

8. Section 25 places a duty on the Park Authority to establish at least one local access forum for its area.

Power to uphold and manage access rights and proposed procedures

9. The Park Authority has several powers available to uphold and manage outdoor access rights. Notwithstanding these new powers, it is hoped that most breaches of the access legislation by land managers will be resolved without the need for formal procedures such as written notices or enforcement action. It is anticipated that in the early years of outdoor access rights some land managers and users may not be fully aware of their new responsibilities and that much of the CNPA's work will involve raising awareness and understanding, and giving assistance with compliance.
10. Before moving on to deal with power to uphold access rights it should be noted that, although it does not have a duty to do so, the Park Authority will have an important role to play in the resolution of outdoor access issues concerning repeated irresponsible behaviour that may be brought to the Authority's attention by land managers. Similarly there may be issues that emerge through conflicting use of sites by different recreational groups. Powers are available to limit the exercise of access rights under sections 11 and 12 of the Act although it should be noted that the Authority does not have any powers under the Act to take action against individual access takers. In practice the action taken to resolve the sort of outdoor access issues raised by land managers is likely to vary considerably depending on the specific context of the situation and so the definition of specific procedures are unlikely to provide a useful way forwards.
11. In relation to paragraph 10, therefore, it is proposed that the Park Authority will seek to resolve such outdoor access issues by using an appropriate combination of the following approaches:
 - a) Investigating the issues by talking to stakeholders, carrying out site visits or by undertaking further research;
 - b) Bringing conflicting interested parties together;
 - c) Drawing upon the expertise and powers of other agencies, authorities and governing bodies;
 - d) Deploying of rangers services;
 - e) Involving the Local Outdoor Access Forum in access issues of strategic importance or on matters of principle;
 - f) Promoting the development of appropriate information and infrastructure for visitors;
 - g) Promoting changes to vehicle management arrangements;
 - h) Involving users, land managers and communities in the development and review of the core paths plan;
 - i) Using management solutions such as byelaws and exemption orders where appropriate.

Section 14: Prohibitions signs, obstructions, dangerous impediments etc.

Annex 1 identifies the proposed procedures in respect of Sections 14 and 15.

12. This Section gives the National Park Authority the power to take action against land managers who undertake any activity, or desist from any activity, for the main purpose

of deterring or preventing the exercise of access rights. The Park Authority is empowered to serve a Notice on a land manager requiring that action is taken to right the problem. In the event of non-compliance with a Notice, the Park Authority is empowered to carry out the measures required by the Notice itself, and to recover the costs from the land manager. There are provisions for a land manager to appeal to the Sheriff against any Notice.

Section 15: Measures for safety, protection, guidance and assistance

13. This Section empowers the Park Authority to warn and protect the public against any danger on land in which access rights are exercisable (e.g. by installing and maintaining signs, fences, gates) and to install and maintain facilities to support the public exercise of access rights and related comfort and convenience. This paper only deals with the first of these two functions, *vis-à-vis* warning and protecting the public. Where the Park Authority considers any structure is likely to injure a person exercising access rights, it is empowered to serve a Notice on the land manager requiring specified remedial action to be taken within a specified time. In the event of non-compliance with a Notice, the Park Authority is empowered to carry out the measures required by the Notice itself and to recover the costs from the land manager. There are provisions for a land manager to appeal to the Sheriff against any Notice.
14. Both Sections 14 and 15 can be deployed in relation to any access land and are not purely linked to paths. However, they do not apply to land outwith outdoor access rights, unless the land is on a right of way or a core path.

Section 23: Reinstatement of the surface of a core path or right of way

Annex 2 identifies the proposed procedures under Section 23.

15. This Section deals with ploughing and disturbance to land and is linked specifically to core paths and rights of way. There is a duty on a land manager to restore the surface of such a path within 14 days of it being disturbed, or a longer period as allowed by the Park Authority. If reinstatement is not undertaken in accordance with these requirements, the land manager is guilty of an offence and liable to a fine of up to £1000 on conviction. The Park Authority may give 14 days notice to the land manager of its intention to reinstate the path and after this period carry out the reinstatement and recover the cost involved from the land manager.

Recommendations:

16. **The Board is asked to note the duty placed on the Cairngorms National Park Authority to uphold access rights and the powers that are available to enforce and manage access rights**
17. **The Board is asked to approve the delegation of responsibility for decision making in respect to Sections 14, 15 and 23 to the Head of Visitor Services and Recreation**

Proposed procedure for exempting land from access rights

Section 11 Power to exempt particular land from access rights

18. This power enables the CNPA to issue an order to exempt areas of land or inland water from outdoor access rights. This power is likely to be used to exempt land where a charge is to be made for entry to an event such as a concert, a golf tournament or an agricultural show. It is not intended for use to exclude areas for reasons such as regular land management activities; or for areas where a charge would be made for access only, or for extending privacy zones on land outside of what would be considered 'reasonable'. Section 11 Orders can be requested by outside bodies or initiated by the Park Authority itself.
19. The issuing of Orders falls into two categories each of which requires a different procedure:
 - a) Cairngorms National Park Authority can issue Orders for five days or less; but
 - b) Ministerial approval is required for Orders of 6 days to 2 years.
20. **Annex 3** gives a pictorial representation of the proposed procedure for each of these two circumstances. In view of costs and the bureaucracy involved CNPA will wish to use Section 11 Orders sparingly and only once other options have been explored.

Orders for five days or less

21. There is little procedural guidance in the Act or in the Guidance from the Executive, and the Park Authority has the power to decide on such Orders without the need for consultation with others. These types of events are of limited duration and likely to be related to community events such as agricultural shows or gala days and will benefit from an expedient turnaround.

Recommendation:

22. **The Board is asked to approve the delegation of responsibility for decision making in respect of Section 11 Orders (for exemption of land from access rights) of up to five days, to the Head of Visitor Services and Recreation.**
23. Please note:
 - a) A standard application form will be prepared
 - b) There is an option to advertise closure in the press if deemed appropriate.
 - c) It is expected that the costs for advertising in the local press would be met by the applicant, other than in exceptional circumstances

Orders between 6 days and two years

24. For orders of this length the Act contains much more procedural guidance. The Park Authority has a duty to pass all Orders for 6 days or more to the Scottish Ministers for approval and to advertise all Orders made under this section in advance of decisions being taken.

Recommendation:

25. **Members are asked to note that the Board would take decisions on Section 11 Orders (for exemption of land from access rights) of between six days and two years.**
26. Please note:
- a) A standard application form will be drawn up;
 - b) Press adverts will be placed notifying the public of the request for exemption and notices may be placed at the site in question;
 - c) A standard list of consultees will be drawn up, which will include the Local Outdoor Access Forum, and relevant land managers(s), and they will receive notification of the application.
 - d) It is expected that the cost of the advertising will be met by the applicant, unless in exceptional circumstances.

Recommendation:

27. **The Board is asked to approve the procedures outlined in Annexes 1 to 3 as the basis for dealing with casework associated with upholding access rights subject to review after 18 months**

Delivering Sustainability

28. Having clear procedures for discharging its powers in relation to outdoor access will assist the Park Authority deliver sustainability by enabling people to understand and enjoy the special qualities of the Park in a way that fosters those qualities and supports the activities of other.

Delivering A Park for All

29. The procedures proposed will provide an equitable basis to ensure that access opportunities can be delivered across the Park area to the benefit of communities, land managers and recreational users alike.

Delivering Economy, Effectiveness and Efficiency

30. Having in place clear procedural guidance, with appropriate delegated responsibility, will assist CNPA in taking timely action in the resolution of access related problems. Information will be provided to the public so that anyone interested can see the steps that are to be taken.

Links with National Policy

31. The procedures described in this paper implement national legislation and are in line with guidance received from the Scottish Executive. The Executive will undertake monitoring at a national level and CNPA will provide information for these purposes.

Implications

Financial Implications

32. As the Park Authority has only recently assumed its role as access authority, the financial implications of implementing the legislation are still becoming clear. However, it is expected that the caseload may gradually increase as the public begins to recognise the role of the Park Authority, and the importance of the Land Reform (Scotland) Act on outdoor access. Already the Authority is receiving a steady stream of access enquiries that will require investigation and resolution. Staff are in discussions with rangers services from the four local authorities to determine how they can assist.
33. In addition, due to the statutory nature of the procedures it is possible that the expertise of the Park Authority legal advisors will be called upon in the early stages of preparing standardised documents for serving Notices, or exemption order signage. Given the lack of case law it is not expected that seeking legal advice on other than these routine matters will be particularly helpful. Liaison with other local authorities will be important in order to learn from their experiences.

Presentational Implications

34. This paper largely concerns procedural issues and is unlikely to be of particular public interest. Nevertheless some of the individual cases that the Park Authority deals with are likely to be of considerable press interest. Having clear agreed procedures will help assure all interested parties that CNPA is taking its duties seriously and that the issues are addressed professionally and equitably. th

Implications for Stakeholders

35. Overall, the development of procedural guidance will give the public, land managers and other agencies confidence that the CNPA will take a structured, measured and analytical approach to the resolution of outdoor access issues, applied in a fair and objective way. It will clarify for stakeholders that CNPA's approach is based on a sound understanding of its legislative responsibilities whilst allowing for flexibility in dealing with the often complex and changing nature of access issues.

Next Steps

36. Following approval of the procedures there is a need to develop supporting material providing information about the procedures which may be followed. It is also intended to quickly develop templates of formal letters, Notices and standardised signage.

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