



Cairngorms Local Outdoor Access Forum

Paper 1 - Developing Drones Guidance – discussion session

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Purpose

LOAF Members are invited to consider the issues surrounding drone use in the Park and through a facilitated discussion session advise on the scope and key issues that future guidance should address.

Background

There has been a steady increase in the popularity and use of drones for work and for personal use. They can be invaluable tools in surveying and provide awe inspiring footage for use in films and promotional videos. Given the sensitive nature of many parts of the Cairngorms National Park guidance will be developed that seeks to set out the framework for what responsible drone flying should look like in the Park.

The guidance will most likely be focused on the use of drones below 250g (or in the Co class as defined by the Civil Aviation Authority (CAA) and or non-commercial drone flying. Drones below this size do not require a Flyer ID, however it is recommended by the CAA to help people understand how to fly safely and legally. If they have camera in which case only an Operator ID is required.

The guidance would be for "leisure" drone use, such as flying drones at popular visitor locations for non-commercial purposes. It would not cover commercial use of drones for survey work nor would it cover drone use within the confines of facilities such as ski areas or the use of drone for footage associated with recreational activities for commercial or brand enhancement i.e. professional social media influencer.

Key issues for discussion

There is a lack of clarity as to whether drones are covered by access rights and the National Park Authority may seek legal advice on the matter, that said it is considered that guidance is still required and that the following issues could be addressed in the guidance.

Data Protection and privacy



Filming the public with a drone could be classed as video surveillance and for many individuals be seen as particularly intrusive, especially if for example, posting on social media sites such as YouTube takes place without the knowledge of the individual. There is no specific legislation on the data protection implications of drone use. However, the right to privacy and the right to freedom of expression are both considered fundamental. The Information Commissioner, the UK Data Protection regulator, has stated that drone use may infringe a citizen's right to privacy and private life if the drone is used intrusively.

Wildlife and Countryside Act

Some irresponsible behaviours towards wildlife such as flying drones in a way that causes stress or disturbance to animals eg flying close to a nest site could be an offence under the Wildlife and Countryside Act (1981) and the Habitats Regulations 1994. The Wildlife and Countryside Act (1981) states “*You must not intentionally disturb specially protected birds while nesting, or their young.*”

Livestock disturbance

Unfortunately, there have been a number of high profile instances where irresponsible drone flying has caused livestock to panic which could be detrimental to pregnant females. Civil proceedings could be raised against an irresponsible drone pilot if livestock were injured as a result of harrying by a drone.

Scottish Outdoor Access Code

Drones are not specifically covered in access rights. Section 2.14 of the Scottish Outdoor Access Code suggests that “the use of powered model craft” is out-with access rights. When the code was developed drone technology was in its infancy. At that time model aircraft use was most frequently associated with club or group use of facilities or sites and therefore local restrictions may have applied.

Currently the Code makes no specific mention of drones. The flying of drones as a leisure activity may be interpreted as falling within the scope of ‘recreational purposes’ in Section 1(3)(a) of the Act. It has also been noted that a user could be flying a drone for recreational purposes while standing on land not requiring access rights, like a road or a garden, but nevertheless overflying land where access rights apply.

If flying a drone for leisure purposes is to be taken to be within the scope of access rights, drone users would be required to undertake the activity in a manner that is consistent with the Code's three guiding principles of respect for other people, caring for the environment and taking responsibility for your own actions.