

DRAFT LETTER

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Dear

**PART 1 LAND REFORM (SCOTLAND) ACT 2003 - CONSULTATION ON DRAFT
GUIDANCE FOR LOCAL AUTHORITIES & NATIONAL PARK AUTHORITIES**

Thank you for providing the Cairngorms National Park Authority (CNPA) with an opportunity to comment on the consultative draft guidance for Local Authorities and National Park Authorities on their functions under the access legislation. On the whole, the CNPA has found the draft guidance to be potentially of great assistance and it provides some useful background information and explanatory text for some of the Park Authority's key functions under the Act.

The guidance is set out in a logical order, although pagination and numbering of paragraphs would greatly assist with ease of reference. However, there are one or two areas where we would have expected more detailed guidance, or a better steer, and these are expanded on below. We have set out some general points first, followed by more specific comments which have bearing on the special circumstances of the Cairngorms National Park.

GENERAL POINTS

Terminology: A key issue for National Park Authorities with this draft guidance is the repeated reference to 'local authority' powers and duties under the Act. While we appreciate that the term 'local authority' is defined in the Land Reform Act as including National Park Authorities (where they exist), for the vast majority of people this is a rather obscure detail, and there is a danger that the words will be taken at face value leading to confusion about who is responsible for action at a local level.

While National Park Authorities are acknowledged in the title of the Guidance, we were disappointed to see that within the text reference to the fact that these are also the powers and duties of National Park Authorities is inconsistent.

The CNPA has already written to the Scottish Executive and SNH to express our concerns on this issue, specifically on the contents of the proposed Scottish Outdoor Access Code and other supporting material (CNPA letter of 26 February 2004). Since that time we have been concerned to see that further material has been issued to the public with reference to the part that 'local authorities' will play in managing access in Scotland with no explanation of the situation within National Parks.

There is an opportunity in issuing the Guidance to help resolve this confusion. We suggest that two steps are required. First the Guidance should include a new section of text near the start of Section 2 that describes the potential for confusion that is likely to arise within the minds of the public (in relation to National Parks) if the term 'local authority' is used in leaflets, websites or other publications. Guidance should be given on the way the term is used in the legislation and the use of suitable alternative text. For example, the use of the term

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‘access authority’ would, if suitably defined, be a good generic term which avoids the need to make complicated caveats. Secondly, the references to local authorities within the guidance should be made consistent, preferably by a similar process of early definition and then use of our preferred term, ‘access authority’.

Detail within the Guidance : The amount of detail provided is inconsistent. For example, the model letter and written notice in respect of *prohibition signs and obstructions* (S.14) is a helpful suggestion of an access function delivery mechanism which backs up some useful explanatory notes. By contrast, the section on *powers to exempt particular areas of land from access rights* (S.11) lacks specific guidance on an actual mechanism for granting an exemption order. It would be useful to receive more detailed guidance on the exemption process itself, all the way through from serving notice and taking a decision, to a process for appeals. It would also be helpful if this included a set of model documents for making an exemption order. For consistency, model documents should be promoted across Scotland to achieve a standard approach.

Local Access Forums : The guidance on Local Access Forums (S.25) is helpful, but what is lacking is guidance or ideas on an appointments, or renewal of membership, procedure. Also, while the emphasis in the Act is on the local management of access, there is scant reference to the National Access Forum and its role. It would be useful to see more on the relationship and methods of working between the local and national Forums.

Technical Annex : Generally speaking the section on Core Paths Plans, the definition, the process and the further guidance, is very helpful. We feel that the proposal to provide a technical annex on mapping core paths would be beneficial and would assist in standardising procedures across Scotland. This will be particularly relevant in National Parks which straddle a number of local authorities.

ISSUES SPECIFIC TO THE CAIRNGORMS NATIONAL PARK

Section 13(1) of the Act relates to the duty of local authorities to uphold access rights. A duty is placed on local authorities to assert, protect, keep open and free from encroachment those routes by which access may be reasonably exercised. However, this is qualified by Section 13(2) which states that *in pursuance of the above duty, a local authority is not required to do anything that would be inconsistent with the carrying out of any of the authority's other functions*. The guidance states that duties under this section of the Act do not conflict with a local authority's other functions and the example is given is when a local authority is considering planning applications for development on land over which access rights are exercisable. In such cases, the local authority will still be able to give consent for developments.

Given the unique situation of the CNPA's shared planning powers, and the fact that the CNPA does not become the planning authority until an application has been called-in, there is the potential for situations to arise whereby a planning applications is not called-in by the National Park Authority, but which might in fact conflict with the responsible exercise of access rights. It would be helpful if guidance was provided on a mechanism to ensure that, in this unique situation, a planning authority (not CNPA) has regard to the duties of the competent access authority (CNPA). We would value guidance on how the local authorities should deal with planning applications that are not called-in by the CNPA, or how the CNPA, as ‘access authority’ should ensure that it fulfils its statutory duties under the access legislation when not acting as the planning authority. The alternative, that the CNPA calls-in all planning applications that may have an impact on access rights, is likely to be an additional administrative burden. This issue needs to be addressed.

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A similar situation arises under Section 17 of the Act. The guidance suggests that local authorities should seek reasonable opportunities for developers to create, divert and manage core paths through appropriate planning conditions and planning agreements within the TCP(S) Act. If a planning application is not called-in by the CNPA, the opportunity for planning gain may be lost because the planning authority is not the competent access authority. It would be helpful to have guidance on a mechanism to ensure that a planning authority (not CNPA) has regard to core paths that are the responsibility of the CNPA. This issue needs to be addressed.

I trust that you find the above comments helpful. Please let me know if we can provide further clarification.