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## CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

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**Title:** Upholding Access Rights – an examination of current issues

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**Purpose:** To update the Forum with some examples of access issues currently under investigation in the Cairngorms National Park

### Background

Under Section 13 of the Land Reform (Scotland) Act, the Cairngorms National Park Authority has the duty to uphold access rights. Sections 14 and 15 give specific powers to the Park Authority to take action against land managers who utilise prohibition signs, obstructions and dangerous impediments, etc for the main purpose of deterring or preventing the exercise of access rights. Earlier in the year, the CNPA developed a set of procedures to govern their response to access issues raised, appended to this paper

Since February 2005 CNPA have received correspondence from 33 members of the public regarding 36 different issues in 23 locations. The locations include farms; estates; urban sites; water; and community path networks. The issues raised have predominantly concerned physical blockages to access such as locked gates, stiles, electric fences and cattle-grids; fewer have related to signage and car parking charges and fewer still have related to one individual's encounter with another. All these issues have been raised by users in relation to land management issues, or in querying the rights and responsibilities under the Code pertaining to both recreational users and land managers.

CNPA have also received correspondence from two land managers concerning cumulative impacts of recreational behaviour – dogs in 'caper' woods and road side camping – plus miscellaneous queries about diverting a right of way; a path stoppage order; estate hill tracks and vehicular damage to tracks.

The recording of these issues will be much assisted by the installation of new GIS based software CAMS (Countryside Access Management System) in December 2005.

The following are examples of cases currently under review and at differing stages of resolution.

### Case 1 - Electric Fence

A complaint was received regarding an electric fence in remote upland hill country (located at 800m in height) which appeared to have inadequate crossing points, and a lack of information regarding its extent. This complaint was corroborated by further informal contact with other members of the public. The Access Officer contacted the land manager and went out to walk the fence with regard to discussing its purpose and how it could be made more access friendly. The fence in question is extensive (7.5kms long); hip to waist height and comprises three to four electrified wires which transmit a powerful current (sufficient to knock a person over). The fence is in place for stock and deer control on a seasonal basis and traverses a line of hills, which are frequented by hill walkers. The CNPA view is that an electric fence of this nature is of sufficiently unusual and unexpected a nature that the land

manager should make efforts to appraise the hill going public of its existence and location, and has suggested the following actions for next spring:

- A map board and information at the car parking access point
- Fully insulated crossing points complete with foot stiles and situated adjacent to straining posts
- Information regarding the direction of crossing points and a regular indication of whether the fence is electrified or not (next season it is intended that one section of it will be switched off)

The land manager has indicated that they are amenable to making changes for next season and CNPA will continue to work closely with them regarding these actions.

### **Case 2 - Access to Water**

Two queries have been received over the status of access to water for canoeing, at a loch which is located in a National Nature Reserve. There has been negligible access to water in the past partly because of the inaccessibility of the water body from the road and a history of access having been discouraged by bye-laws, now well out of date. However there has long been a latent demand for water access which has now become a reality due to the Land Reform Act. It is envisaged that most of the demand for use is likely to emanate from local users and groups as opposed to the casual recreational visitor – although it is acknowledged that this may change in time.

Under the terms of the Land Reform Act, access rights do apply at this location but the significant natural heritage issues means that the way that access is undertaken will be of crucial importance if disturbance to over-wintering geese; breeding wildfowl and otters is to be avoided. It is therefore thought that site specific guidance needs to be produced on what might constitute responsible access. The Access Officer has had an initial discussion and site visit with Scottish Natural Heritage to evaluate the potential impact of canoeing access on the features of interest. The next stage is to involve the land manager and users in developing guidance and a meeting to that effect is planned for December this year.

### **Case 3 – Locked Deer Gates, fenced track and stile**

Four complaints and queries have come in regarding two locked gates; a large and difficult stile; and a track which has been 'fenced across' on one particular estate. These were verified by site visits and informal conversations with local contacts, and having verified the 'ownership' of the access issues in question; an approach has been made to the land manager.

The issue highlighted here is the need for access infrastructure which will allow a full range of access to horse riders, cyclists, walkers and disabled users (where the terrain merits) whilst being effective at managing the movement of deer populations; and keeping out the potential risk of unauthorised motorcycle use.

CNPA has been in contact with other Access Officers and the British Horse Society to gather information about types of structure that could be of help in achieving these aims.

### **Case 4 – Cattle Grid**

Earlier in the year the CNPA were made aware of difficulties being experienced by a horse riding trekking operator over land on a single estate. The enquiry came from the operator directly and from the local councillor. Access is taken by the operator on approximately 9 days a year and along a hard surfaced track forming part of an old military road crossing the

estate land for approximately 2 kilometres. The difficulties have revolved around two matters: firstly, the estate 'withdrawing permission' for access across their land and suggesting an alternative route along a busy blind road and secondly, the existence of a cattle grid and blocking off of access around it. Due to age and gradual infill, the grid does not represent the barrier that one might expect from such a structure but it is understood that not all horse owners would feel confident about traversing it.

The Access Officer met with the estate and discussion was held around the new rights and responsibilities conferred by the Land Reform Act and how they relate to land managers and users. The estate is now aware of the rights of people to take responsible access. The estate indicated that they were prepared to remove the grid subject to co-ordinating its removal with other work on the estate requiring use of a digger. The removal of the side fence to allow access around the grid was also discussed as an alternative to removing the grid.

A recent site visit has verified that no actions have been undertaken and that those trying to access the route on horse-back may still be intimidated. A letter has been issued to the estate reminding them of their responsibility and a further response is awaited.

### **Case 5 – Management of Riverside Walkway**

A local community council approached the CNPA to ask for help in reinstating a riverside path. A long running impasse had occurred concerning the terms of a lease agreement between the Estate involved and the community council. Attempts to negotiate a mutually satisfactory management arrangement between estate and community council had stalled, but the community council are keen to enter negotiations to ensure the path can come back into use.

Since no satisfactory management arrangement had emerged, the estate had closed the route for the last two years and no maintenance has been undertaken by the Community Council as had occurred previously. Consequently the route is overgrown and some slumping has taken place – remedial work would be needed to make it functional again.

A meeting was held to bring together interested parties to find a workable solution. The estate has been offered a model path agreement (from the Scottish Executive Section 27 Guidance for Access Authorities) as a way to reach a clear framework for the responsibilities of, and burdens on, both land manager and Community Council. They have now come back with a re-worked path agreement which, whilst it has the model agreement as its basis, also lays substantial burdens on the Community Council in respect of reinstatement works; liability for the actions of other parties and the extent of legal and advisory fees incurred by the estate in concluding the agreement.

A second meeting has been arranged between Community Council, their legal advisor and CNPA staff to consider the draft response of the Estate and a way forward.

**Fran Potheary**  
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ANNEX 1 - SECTIONS 14 AND 15: UPHOLDING OUTDOOR ACCESS RIGHTS



