
CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Information Leaflet for Land Managers

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Purpose

This paper seeks comment from the Forum on the proposed content of an information leaflet for land managers concerning their responsibilities under the Land Reform (Scotland) Act; and the role of the Cairngorms National Park Authority in upholding access rights.

Recommendation

The Forum is asked to consider the proposed content of the paper and advise of any further matters for inclusion.

Background

1. A paper was submitted to the CNPA Board meeting in July 2005 outlining the procedures for upholding access rights. The agreed procedures are attached. The paper made reference to the fact that additional, more detailed material would be made available to land managers to clarify their responsibilities, and the role of the Park Authority under the Land Reform (Scotland) Act. It is proposed that a simple A4 leaflet is produced that can be enclosed with introductory communication from the Authority when approaching land managers over access issues that have been raised by the public with the Authority. The leaflet is specifically geared to address enforcement issues.

Proposed content

2. It is proposed that the leaflet is based on an FAQ (Frequently Asked Questions) format whereby answers are given to the most likely queries raised. The types of questions and answers are given below, in a bulleted format at present, further development of the leaflet will look at design, layout and

What is the duty on land managers?

3. "To use and manage land in a way that respects access rights"
 - Respect access rights in managing your land or water
 - Act reasonably when asking people to avoid land management operations
 - Work with the Park Authority and other bodies to help integrate access and land management
 - Take account of access rights if you manage contiguous land or water which is outwith access rights

What is the duty of the CNPA in regard to upholding access rights?

4. "To assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised"

5. The Park Authority has certain powers it can use to secure, and manage, access rights
 - It can take steps to protect and warn people of dangers on the land
 - It can show or enclose recommended routes or established paths and give directions to such land
 - It can remove any prohibiting sign, obstruction or dangerous impediment that is intended to prevent or deter anyone from exercising access rights
 - It can enter into a management agreement with a land manager to set out how much management is needed at a particular site
 - It can enter into management agreements to delineate and maintain core paths
 - It can exempt land or water from access rights for up to five days (longer exemptions require public consultation and Ministerial consent)
 - It can introduce byelaws to assist in the management of access rights
 - It can acquire land to enable and facilitate access rights and can do so compulsorily with the consent of Scottish Ministers

What is CNPA's philosophy?

6. We are trying to work collaboratively with land managers to help them manage their land in a way that respects access rights. We work well with most land managers in the park, and will seek to match the scale of the approach with the scale of the problem. Where we have to take actions against land managers to resolve problems we follow clear procedures and a step-by-step approach. The type of enforcement needed will often depend on the response of the land manager to their access responsibilities. However a land manager who unreasonably or persistently obstructs access rights will be subject to rigorous enforcement action to defend access rights.

What are the main ways in which access may be blocked, and what action can CNPA take?

7. **Failure to re-instate the surface of a core path or ROW after land management operation** – a land manager is required by law to reinstate the surface of a core path or right of way which has been damaged by his or her actions e.g. ploughing or crop planting within 14 days of the initial disturbance. *Failure to do so renders a land manager liable to a fine of up to £1,000.*
8. **Obstructing or deterring responsible access** – CNPA has power to serve notice on a land manager to ensure the removal of obstructions and other nuisances that have the purpose of preventing or deterring public access.
9. **Doing something, or omitting to do something, that affects the safety of the public** – CNPA has power to serve notice on a land manager to ensure that anything that has been constructed or adapted forming a danger to the public is removed or made safe.

What kinds of obstructions are there?

10. Land managers need to be able to manage their land and carry out land management operations in doing so. However the following may be examples of actions or impediments that may be regarded as *deliberate or unreasonable* in obstructing or hindering someone from taking access:
 - making a well used path difficult for the public e.g. by dumping materials on it;
 - putting up intimidating or prohibitory notices;

- putting up an electric or other fence without a means to cross it;
- cattle grids without a bypass;
- locked gates without alternative access;
- signage that is not compliant with Scottish Outdoor Access Code;
- stiles or other barriers restricting certain users e.g. horse-riders, cyclists or wheelchairs users;
- dangerous animals;
- not re-instating a core path or right of way which has been ploughed;
- closing off parking areas used for access purposes;
- failing to take account of access rights in planning applications

What does 'serving a notice' mean?

11. CNPA will do its best to resolve access issues in a collaborative way with land managers. However if a land manager persists in obstructing access, the CNPA does have the power to write them a statutory notice requiring that access rights be upheld. If the land manager still does not comply, the Park Authority (or anybody authorised by them) is entitled to go onto the land and remove the obstruction. They can then re-coup the costs of their action from the land manager.

What will the CNPA do to help resolve an access issue?

12. The steps below are replicated from the procedures paper (see attached)

- Give advice and/or suggest alternative course of action to enquirer
- Undertake early investigation of issue e.g. site visit
- Make informal contact with land owner
- Explore solutions in conjunction with land owner and other stakeholders
- Seek agreement on course of action
- Request a specific course of action
- Look for verification that action been undertaken
- Consult with LOAF
- Serve formal notice on land manager
- Take action to remove barriers
- Re-coup cost of actions from land manager

What can a land manager do if they encounter irresponsible behaviour?

13. A land manager is advised to take the following action:

- Talk calmly to the people involved
- Explain your concerns and try to ascertain the reason behind their actions
- Ascertain that their behaviour is indeed irresponsible and be prepared to change your position if it isn't or there is a good reason behind their actions
- Ask them to modify their behaviour
- If they persist in behaving irresponsibly, you can ask them to leave
- If you believe they are committing an offence, you can involve the police
- Be calm and don't ever use force

Who can give further information and advice?

14. The following agencies, personnel and websites can assist you further:

- CNPA access staff
- Outdoor access website and contacts for access staff within CNPA
- Land managers bodies e.g. NFUS, SRPBA

15. The Forum is asked to comment on the proposed content and advise on further matters for inclusion

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