

UNCONFIRMED DRAFT

18th meeting of National Access Forum

Battleby
20th May 2009

Present:

Richard Cooke	Convenor
Mark Wrightham	Scottish Natural Heritage (SNH); Secretary
Dorothy Breckenridge	Activity Scotland (AS)
Jane Campbell-Morrison	Scottish Sports Association (SSA)
Hebe Carus	Mountaineering Council of Scotland (MCofS)
Patricia Cassidy	sportscotland (SS)
Mike Dales	Scottish Canoe Association (SCA)
Roddy Fairley	SNH
Anne Gray	Scottish Rural Property & Business Association (SRPBA)
Alick Hay	Historic Houses Association of Scotland (HHA)
Bridget Jones	Loch Lomond & the Trossachs National Park Authority (LLTNPA)
Helen Jones	Scottish Government (SG) Rural Directorate
Richard Kay	Confederation of Forest Industries (ConFor)
Kevin Lafferty	Forestry Commission Scotland (FCS)
Alastair Maclennan	NFU Scotland (NFUS)
George Menzies	Scotways
Dave Morris	Ramblers Association Scotland (RAS)
Simon Pilpel	Local access forum contact
Colin Shedden	British Association for Shooting & Conservation (BASC)
Pat Somerville	British Horse Society Scotland (BHS)

Apologies: Lloyd Austin (RSPB Scotland), Robert Balfour (Association of Deer Management Groups), Jonathan Kitching (Scottish Advisory Panel for Outdoor Education), Tara Macgregor (VisitScotland), Geoff Robson (Convention of Scottish Local Authorities).

Welcome

1. The Convenor opened the meeting, noting that Patricia Cassidy had replaced Lee Cousins as **sportscotland**'s representative on the Forum and acknowledging Lee's substantial contribution to the work of the Forum over many years.

Action point 18/1: Convenor to write to Lee Cousins thanking him for his input to the Forum.

Minutes of previous meeting

2. The minutes were approved subject to qualification of para 23 (bullet 2) to indicate why farmers would be unlikely to provide regularly updated online access information.

Action point 17/1: Secretary to circulate SNH summary of current planning policy and link to SNH access & planning report.

3. Discharged.

17/2: SNH to gather views from access authorities regarding a possible meeting to discuss voluntary approaches to issue monitoring and take this process forward as appropriate.

4. Discharged. Mark Wrightham reported that SNH had sought views from access officers by e-mail and had received a modest response in which various contributors saw this as a way of gathering information at national level or sharing experience between access officers; caution had also been noted with regard to the workload implications of any new initiative. The Secretary had contacted those who had responded to identify a suitable date for a meeting – for initial discussion of this proposal.

17/3: SNH to consider payment of full members' expenses in time for next meeting.

5. The Secretary reported that SNH had agreed to meet the travel expenses incurred by full members when attending Forum meetings. This would apply to members who were not employed in or funded by the public sector, excluding SNH grant-aided posts where the grant includes attendance at the NAF. It was emphasised that this arrangement would be limited to the NAF, reflecting its particular importance to SNH's work and its wider representative role. This arrangement would include all Forum meetings taking place during this financial year and would apply retrospectively to the present meeting.

Action point 18/2: Secretary to finalise and circulate proforma to eligible members as a basis for travel expense claims.

17/4: Members to provide initial comments to the Secretary regarding the effectiveness and future role of the NAF, and liaison with local access forums, by Friday 20 March.

17/5: Secretary to circulate Operating Principles of Forum and table summarising roles & responsibilities of various access bodies as background context.

17/6: SNH to draft short paper on future role of the Forum in light of comments received and the forthcoming meeting with the Minister for Environment.

6. All discharged; paper on present agenda.

17/7: Secretary to draft a correspondence paper on liaison between the national and local forums for circulation to the Forum's correspondence network.

7. Ongoing: the Secretary suggested that it would be helpful to circulate this to local forum members as part of the advance publicity for this year's annual joint meeting, including a slot for discussion at the meeting itself. The Convenor offered to circulate a letter to support this process.

Action point 18/3: Secretary to take forward arrangements for annual joint meeting with local forums and circulate preliminary information (accompanied by covering message from the Convenor and paper on NAF-LAF liaison).

17/8: Secretary to finalise stalking signage guidance, in the light of this discussion, in conjunction with the stalking sub-group.

8. Discharged. Mark Wrightham reported that the finalised guidance was now available at www.outdooraccess-scotland.com and had featured in a successful *Sharing Good Practice* event during March, which had been well attended by stalkers and access officers. In discussion, it was noted that Invercauld Estate had adopted the longer term sign template as a basis for new signage.

17/9: Heading for the Scottish Hills (HFTSH) website proposal to be developed further by stalking sub-group.

17/10: Stalking sub-group to continue to operate with a wider remit covering all stalking-related communication.

9. Discharged. The Secretary reported that SNH was preparing a Project Plan to integrate the new HFTSH facility into the wider redevelopment of the Scottish Outdoor Access Code website. It was proposed that the sub-group should consider the draft Project Plan, and some initial proposals regarding the nature and content of messages, by correspondence. This could be followed by more detailed consideration of advanced drafts at a meeting of the group during August. This would also provide an opportunity to consider any issues which might need to be addressed under the group's broader remit – which now included all types of stalking-related communication. Richard Cooke noted that it would be helpful to define clear end dates for work undertaken by sub-groups.

17/11: Secretary to write to the Scottish Government Rural Payments & Inspections Directorate (SGRPID) noting the points discussed and offering the Forum's input to the review of the Rural Priorities (RP) application process.

10. Discharged. In response to a query from Dave Morris, the Convenor confirmed that there had been no subsequent discussion with SGRPID.

17/12: Secretary to pass comments on the draft electric fencing guidance back to the Moorland Forum.

11. Discharged. Mark Wrightham noted that a letter providing further comment on this issue had subsequently been received from John Mackay of Scotways and had been forwarded to the Moorland Forum. Colin Shedden reported that the comments received had been assimilated into the guidance, which would be considered again at the Moorland Forum's next meeting in June, and Richard Cooke suggested that it might be helpful if the NAF were copied in on future papers.

12. Dave Morris suggested that electric fences present a particularly serious obstacle to access because crossing may only be possible at gates, and noted that such fences are not confined to moorland areas. Anne Gray commented that the principle (as distinct from the design) of fencing might be outside the Forum's remit and Alastair MacLennan suggested that land managers were best placed to make this decision in the light of practicalities on the ground.

Action point 18/4: Paper on electric fencing to be included on agenda for next regular meeting.

17/13: Secretary to finalise membership and initiate work of events sub-group.

13. Discharged. Mark Wrightham noted that further minor changes had been made to the membership of the sub-group as discussed at the last meeting and that the UK-wide Institute of Fundraising had also been invited to join; the group would be chaired by Dorothy Breckenridge. A date was being sought for the group's first meeting.

Reports from Convenor and Secretary

14. The Convenor summarised a recent meeting with Roseanna Cunningham MSP, Minister for Environment, which had also been attended by the previous Forum Convenor, Bob Reid, and Roddy Fairley. This had discussed the context for the Forum's work, progress with implementation of the access legislation and the Forum's current activities. There had been some discussion of access provision through Single Outcome Agreements (SOAs) and Richard Cooke noted that this would be an area of future interest for the Forum. The Convenor had invited the Minister to attend a future Forum meeting.

15. Dave Morris suggested that the SOA framework underplayed the role of central government in the implementation of access rights. He also emphasised the importance of provision for walking and cycling as part of the legacy of the 2014 Commonwealth Games. Richard Cooke suggested that this could be considered in discussion of the future role of the NAF.
16. The Convenor noted his recent attendance at local forum meetings in North Ayrshire and Perth & Kinross, and at the Scottish Countryside Access Network (SCAN) conference in early May; the latter had included much discussion about the practical operation of the Scotland Rural Development Plan (SRDP). He was due to attend further local forum meetings in the near future and had emphasised the NAF's willingness to engage with the local bodies on these occasions.
17. The Secretary summarised a number of areas of recent and ongoing activity, including:
 - correspondence with Perth & Kinross Outdoor Access Forum regarding the use of padlocks and barbed wire, which had been referred to SRPBA and NFUS for inclusion, as appropriate, in guidance to land managers;
 - correspondence with Argyll & Bute Council regarding the scope of access rights for motorised vehicles "constructed or adapted for use by a person who has a disability" as indicated in Section 9 of the Act. Following discussion with Rona Gibb, Secretary of the Access for All (Scotland) Forum, it had been suggested that this group could lead the development of draft guidance for users, and Mark Wrightham suggested that it would be important for the NAF to provide support as necessary;
 - the Welsh Assembly Petitions Committee had recently met at Holyrood to take evidence regarding access to inland water in Scotland, to inform their consideration of a petition seeking analogous access arrangements in Wales. Several Forum members had contributed to this process and the Committee's report had supported the adoption of a similar approach. Anne Gray noted that SCA/SRPBA's joint draft guidance on access management on inland water would shortly be circulated to various interested bodies for comment;
 - the first review of the Forum's full membership was due to conclude during 2009 with consideration of the public and 'other body' members. This could result in some changes, in particular to replace the Farming & Wildlife Advisory Group and to ensure appropriate representation of equalities interests, and would be taken forward as previously agreed, aiming for an election of 'other bodies' at the November Forum meeting, and;
 - following an approach from the Scottish Association for Country Sports, this body had been added to the list of corresponding members.

Action point 18/5: Review of public and 'other' full members to be taken forward by Secretary, in discussion with Convenor, in line with agreed process.

18. Dave Morris asked whether there had been any further discussion with Network Rail regarding access across level crossings. Mark Wrightham reported that there had been no further discussion since the last Forum meeting and suggested that progress would probably now depend on the legal review which was being led, in Scotland, by the Scottish Law Commission. It was noted that access interests had been highlighted at a recent UK-wide seminar on this topic organised by the Office of the Rail Regulator.

Court of Session judgement: Feddanhill Wood

19. Mark Wrightham briefly introduced this item, which concerned an appeal judgement from the Court of Session regarding a locked gate at Feddanhill Wood on the Black Isle. He noted that some additional correspondence had been received as follows:

- in a letter to the Forum, SCAN had suggested that the judgement may set a precedent allowing barriers to be erected if an owner is concerned that some users may damage the land, and if the owner states that the main purpose was not to keep people out – it was suggested that this could compromise the effectiveness of the Section 14 procedure for upholding access rights. The letter also expressed general concern about lack of reference to the Code in recent legal cases, and;
- Highland Council had reported that a riparian manager had raised an interim interdict against a rafting company preventing access to the river on grounds of damage caused to paths and the riverbank, and disturbance to salmon fishing.

20. In discussion:

- Dave Morris expressed concern at the suggestion that the judgement would make the Act harder to implement, suggesting that the Act was working well and that problems were only associated with a small minority of land managers. He emphasised that the principle of management of access is integral to the Act and that the solution to local problems lay in effective application of this approach, including appropriate signage;
- George Menzies suggested that the references to the purpose of an action were separate from the main judgement and did not set a wider precedent. He also distinguished between the legal status of the Code when advising on how and where access rights can be exercised, suggesting that the latter should be separated into an annex. Some other members suggested, however, that the key need was to provide a stronger imperative for the courts to refer to the Code and to place both types of advice on an equal footing, and that these changes required amendment of the Act;
- Simon Pilpel suggested that even if concerns were based on misinterpretation of the judgement, it would still be problematic if these made access rights harder to uphold. He also suggested that the cost of legal action might deter access authorities from pursuing such cases; Dave Morris noted that protective costs arrangements could address this concern. Richard Kay noted that such action placed a heavy financial burden on all parties and suggested that concern about the potential cost of litigation could deter land managers from enhancing access provision, which might also be contrary to the public interest;
- Anne Gray suggested that the judgement might only allow gates to be locked to prevent damage which would unreasonably affect land management. She also commented that this case might imply a need for access officers to have a greater awareness of land management practice and that local access forums could provide helpful sounding boards when considering such issues. Alastair MacLennan commented that difficulties were only likely to arise as a result of extreme interpretations of the judgement and that this risk might diminish with time;
- Alick Hay suggested that it would sometimes be helpful to encourage horse riders to use particular areas and Pat Somerville noted that such judgements could be complex, with different routes being appropriate under different conditions. Richard Kay noted the potential conflict between some other user groups, citing the use of purpose-built singletrack mountain bike trails by walkers, and;
- Kevin Lafferty noted that the FCS Access Behaviour Code would promote appropriate access management by forest managers and that the inclusion of case studies would help to share good practice.

21. Richard Cooke noted that this process of legal clarification would continue and emphasised the practical importance of mutual cooperation and compromise.

SNH access campaigns

22. Roddy Fairley introduced a paper providing an update on current SNH access education campaigns. Promotion of the Code will continue with a particular focus on campers and dog owners, and the paper included an overview of recent and ongoing advertising and wider awareness-raising activity. This will be accompanied by an *Enjoying the Outdoors* campaign, which will contribute to the national target of increasing the proportion of adults making one or more visits to the outdoors per week, and will also be set in the context of responsible behaviour. In discussion:

- Dave Morris highlighted the need for provision close to communities in order to increase participation and Roddy Fairley noted the potential contribution of the Central Scotland Green Network. Dave Morris also argued that a greater proportion of transport budgets should be directed towards non-motorised travel. Richard Cooke suggested that there would be broad agreement with these points;
- the importance of engaging with schools was noted. Roddy Fairley indicated that work was ongoing to support the use of Code education packs in schools and noted the challenges of incorporating this into the curriculum;
- several members endorsed the focus on dog owners as a key audience. The paper noted monitoring data which suggested that the key messages had not yet reached a high proportion of campers and Roddy Fairley indicated that this intelligence would allow alternative approaches to be considered;
- there was some discussion of the 'Know the Code' promotional strapline; Roddy Fairley emphasised that this had been informed by the views of the intended target audience, which had been tested using focus groups, and;
- Kevin Lafferty highlighted the need for co-ordinated action between all relevant bodies, including NHS Health Scotland, to promote participation.

23. Richard Cooke noted the importance of this work and welcomed the considerable resources being committed to it.

Presentation from Chief Inspector Kevin Findlater, Central Scotland Police

24. The Forum received a presentation on rural antisocial behaviour from Chief Inspector Kevin Findlater of Central Scotland Police. Key points included:

- antisocial behaviour is a long standing problem and is not related to access rights;
- these issues should be primarily addressed by the police rather than through the access management framework – and access forums may be diverted from their core roles by an undue focus on such issues;
- action to address antisocial behaviour can be complicated by the adoption of different approaches by different access authorities, resulting in inconsistency of message. Fine grained interpretations of the Code or the law can also be difficult to apply on the ground;
- Operation Ironworks, a collaborative approach to address antisocial behaviour in the Loch Lomond & the Trossachs National Park, was described. This initiative had strong community support and involved co-ordinated action by three police forces, combining education, management and enforcement, largely through fixed penalties. This had resulted in a significant reduction in complaints and feedback indicating that people “felt safer and more secure” within the Park;

- enforcement does not provide a long-term solution and education, including the access campaigns undertaken by SNH, has a key strategic role;
- there may be scope for wider co-ordinated action across Scotland along the lines of Partnership Against Wildlife Crime, and;
- the Antisocial Behaviour etc (Scotland) Act 2004 requires a strategy to be prepared in each local authority area, in conjunction with the Community Planning Partnership, to deal with antisocial behaviour - and Single Outcome Agreements have a key role.

25. A number of points were raised in discussion:

- the importance of partnership working and the key role of education (to engender 'respect') were reaffirmed. There was some discussion of possible parallels with the Cairngorms National Park, which concluded that the circumstances of the two Parks were very different. There was some evidence that action to address issues within LLTNP could displace them to neighbouring areas;
- Bridget Jones and Kevin Findlater noted that some Park rangers have been trained as Special Constables and patrol with other rangers; this results in a valuable transfer of expertise between rangers and the police, and;
- Dave Morris welcomed the Ironworks initiative and suggested that the Forum might have a role in promoting wider awareness. Mike Dales noted that there may be scope to draw together best practice, citing experience in the Loch Rannoch area which had also experienced antisocial behaviour associated with camping. It was suggested that other case studies could be forwarded to the Secretary to be incorporated in the Forum's guidance on the management of informal camping.

Action point 18/6: Forum members to forward case studies demonstrating the positive management of camping to the Secretary.

26. On behalf of the Forum, the Convenor thanked CI Findlater for his presentation.

Roads and access legislation

27. The Secretary briefly introduced papers from Midlothian Council and SNH which considered the relationship between Scottish access rights and restrictions on certain types of user, in particular horse riders, on 'cycle tracks', 'footways' and 'footpaths' designated under the Roads (Scotland) Act 1984. The SNH paper noted that the roads legislation normally overrides access rights by virtue of Section 6(1)(d) of the Land Reform (Scotland) Act 2003, but the situation is reversed, under Section 7(1) of the 2003 Act, if a route is designated as a core path. Members raised a number of points:

- Pat Somerville noted a number of locations at which this issue had arisen, including Sustrans cycle routes and sections of pavement, and suggested that not all of these were necessarily good candidates for core path designation. There was some discussion of the merits of other approaches including Path Agreements or re-determination of routes under the 1984 Act, and it was noted that this Act did not include a 'bridleway' or other category encompassing a broad range of users;
- there was some discussion about whether the use of such routes by horse riders would constitute a criminal offence, in particular where use had previously been tolerated. George Menzies suggested that this was the case (although some local authorities had promoted these routes to the full range of users within access rights) and took the view that legislative change was needed. Dave Morris suggested that this could be achieved through amendment of either the 1984 or 2003 Act, and;

- Pat Somerville noted that BHS Scotland had raised this issue with Transport Scotland (TS) and offered to forward this correspondence to the Secretary.

Action point 18/7: SNH to discuss the relationship between the Roads (Scotland) Act 1984 and Land Reform (Scotland) Act 2003 with Transport Scotland.

Future role and operation of the Forum

28. Mark Wrightham introduced a paper on the future role of the Forum, which summarised initial comments by correspondence and suggested some possible issues for consideration, including the need to find an appropriate balance between proactive work and retaining the capacity to respond to issues arising from within the Forum's correspondence network. Richard Cooke thanked members for their contributions and highlighted:

- the potential importance of both proactive and reactive work;
- a possible need to facilitate communication between local access forums, and;
- the need to use the influence of the NAF to best effect.

29. Much of the ensuing discussion considered the broad principles of the Forum's operation:

- Dave Morris expressed the view that the Forum had served an important role in allowing vigorous debate and could potentially also have a wider supporting role if, for example, the Forum or Convenor could facilitate dialogue between other parties;
- there was some discussion of the extent to which the Forum could negotiate on a common front, with reference to discussion with Network Rail regarding level crossings. It was agreed that the Convenor could sometimes present a consensus view on behalf of the Forum, where this could be achieved, and that such views carry considerable weight. It was also noted, however, that it would be difficult for anybody to negotiate on the Forum's behalf - as it exists precisely in order to bring together diverse viewpoints, and;
- Dave Morris suggested that the Forum would benefit from more long standing expertise from members who were involved in the development and passage of the access legislation. Alastair Maclennan and Anne Gray suggested, however, that the Act and Code now provide the essential foundation for the work of the Forum.

30. There was also some discussion of more specific practical issues. Alastair Maclennan did not consider that the Forum's role would naturally extend to promoting outdoor recreation. In response to suggested alternative ways of working floated in the paper, he also suggested that e-mail could not usurp the primary role of round table discussion in working through particular issues. Richard Cooke suggested that the Forum's output could be increased by greater use of sub-groups, but this would be facilitated if the administrative load could be shared more widely beyond SNH.

Action point 18/8: Secretary to revise paper on future role of the Forum in the light of discussion to include specific proposals - and re-circulate round contact network for further comment.

Core path planning

31. No specific issues were raised under this standing agenda item.

Access authority funding

32. The Convenor noted that this issue had been highlighted in the recent meeting with the Minister and Roddy Fairley identified the SRDP and local authorities (through SOAs) as two key funding sources. He noted that although local authorities recognise their access roles, these are rarely explicit in SOAs, and the Scottish Government had indicated that SNH should lead in encouraging greater recognition of access within this framework.
33. Richard Cooke noted that LAFs could also help to convey this message and suggested that this be included on the agenda for the forthcoming joint meeting. Simon Pilpel noted that most LAFs were involved in the SOA process and that SG monitoring of access authority expenditure on access would provide a useful information source. Dave Morris expressed concern that funding constraints would result in staff losses within access authorities - and highlighted the need to link to wider objectives relating, for example, to health and education, when making the case.
34. Helen Jones referred to the national performance indicator relating to participation on the Scotland Performs website (<http://www.scotland.gov.uk/About/scotPerforms>), noting that any action to promote this objective would be welcome and suggesting that this should also be included on the agenda for the joint meeting.

Other business

Annual joint meeting with local access forums

35. The venue for the next annual joint meeting was considered, with a preference for Inverness (ideally at the SNH office; Great Glen House) between 30 Sept and 21 Oct (preferably later in this period). Simon Pilpel highlighted the need for early notice and Richard Cooke suggested that a persuasive covering message would be helpful.

Action point 18/9: Secretary to take forward arrangements for annual joint meeting as discussed.

Water gates

36. Mike Dales noted that water gates in fences can pose a hazard to canoeists and suggested that this could be included as a future agenda item. In brief discussion, Alastair MacLennan noted that these can meet a genuine management need but also require frequent maintenance. Anne Gray suggested that SRPBA guidance to land managers could perhaps make reference to this issue, and Richard Cooke suggested that this could highlight the need for maintenance and removal if no longer required.

Commercial access

37. Dorothy Breckenridge highlighted the interim interdict, referred to earlier, which had been raised by a riparian manager against a commercial rafting company - preventing access on the basis of ground damage and disturbance to fishing. Anne Gray indicated that the land manager had taken the view that, for these reasons, access rights did not apply. Dave Morris suggested that the raising of an interdict was particularly likely to intimidate users. Richard Cooke suggested that it may be helpful to consider the need for further guidance to users and land managers on commercial access, perhaps through a sub-group, when work on events guidance had been completed.

Outdoor festivals

38. Dave Morris noted that some outdoor festivals result in very large amounts of abandoned rubbish, and suggested that this presented an opportunity to promote a Leave No Trace message. Alastair MacLennan cited the Outsider festival, which has an environmental theme, as a positive example.

Date of next regular meeting

39. Wednesday 18th November; Battleby.

Summary of action points

18/1: Convenor to write to Lee Cousins thanking him for his input to the Forum.

18/2: Secretary to finalise and circulate proforma to eligible members as a basis for travel expense claims.

18/3: Secretary to take forward arrangements for annual joint meeting with local forums and circulate preliminary information (accompanied by covering message from the Convenor and paper on NAF-LAF liaison).

18/4: Paper on electric fencing to be included on agenda for next regular meeting.

18/5: Review of public and 'other' full members to be taken forward by Secretary, in discussion with Convenor, in line with agreed process.

18/6: Forum members to forward case studies demonstrating the positive management of camping to the Secretary.

18/7: SNH to discuss the relationship between the Roads (Scotland) Act 1984 and Land Reform (Scotland) Act 2003 with Transport Scotland.

18/8: Secretary to revise paper on future role of the Forum in the light of discussion to include specific proposals - and re-circulate round contact network for further comment.

18/9: Secretary to take forward arrangements for annual joint meeting as discussed.