

Dogs and ground-nesting birds

Purpose

1. The attached papers from RSPB Scotland (RSPB), the Scottish Kennel Club (SKC) and SNH are intended to facilitate a discussion about disturbance of ground-nesting birds by uncontrolled dogs.

Action

2. **Members are invited to discuss the papers and comment, in general terms, on the options available to address this issue.**

Background

3. In discussion at the last Forum meeting in November 2009, RSPB asked that the issue of disturbance to ground-nesting birds should be included on the agenda for the present meeting. RSPB have provided a paper which outlines these concerns - which is attached as Annex 1. This paper included an annex describing the evidence base that relates to this issue, but this has not been circulated in order to limit the overall volume of paperwork. This summary is available on request from the Forum Secretary and a small number of copies will be provided at the Forum meeting.
4. SKC expressed an interest in contributing to this discussion and were also therefore invited to contribute a paper by the Forum Secretary. The attached paper from Steve Jenkinson (SKC contact on the NAF; Annex 2) suggests approaches to management and education which may be needed to encourage appropriate behaviour by dog owners. For similar reasons to the above, the accompanying journal article referred to in this paper has not been circulated, but this is available on request and a small number of copies will be available on the day.
5. A paper from SNH is also attached (Annex 3), providing an overview of the range of management mechanisms under the framework of Scottish access rights and nature conservation legislation, and of current efforts to encourage responsible behaviour through SNH's access campaigns.
6. The Forum is invited to discuss this issue and consider the management approaches that might be adopted to address it. This discussion will need to be general in nature, partly because circumstances vary from site to site, and because the lead role in management of specific access issues at local level rests with the relevant access authority, supported as necessary by the local access forum.

Mark Wraitham
Secretary

Annex 1: RSPB paper

National Access Forum: 24 February, 2010.

Disturbance by dogs of sensitive bird species and/or protected areas.

Summary

RSPB Scotland is increasingly concerned about the impact of disturbance by dogs on sensitive bird species and protected areas, especially those managed as nature reserves. Clearly, such disturbance occurs when dogs are irresponsibly controlled by their owners.

Currently, the provisions of the Land Reform (Scotland) Act 2003 and the Scottish Outdoors Access Code are somewhat vague and, at times, confusing, in relation to the control of dogs. While it is possible to introduce management rules, the enforcement of such an approach is difficult with staff being, at best, ignored and, at times, subject to considerable abuse.

This paper outlines the evidence of impacts, highlighting in particular scientific research that suggests that disturbance (especially by dogs) is impacting on the conservation of capercaillie. Other situations are also described, as are the various management measures that have been taken in different sites, including NNRs managed by SNH.

The National Access Forum is invited to consider this paper; to contribute further information to the debate and consider the most appropriate next steps. It is recommended that a sub-group be formed to consider whether further guidance is required to:-

- (a) improve the interpretation of the 2003 Act and the Code in relation to dogs;
- (b) enhance the understanding of, compliance with and, if necessary, enforcement of the Act and Code; and
- (c) whether, longer term, any amendments to the Code should be considered.

Background

RSPB Scotland supports responsible public access to the Scottish countryside – this enables the public to understand and appreciate nature. We warmly welcomed the Act's passing and have been closely involved in the development of the Code, as well as an active member of the National Access Forum and a number of Local Access Forums.

Across Scotland, we own or manage 65,000 hectares of land – all of which are subject to access legislation and to which we encourage responsible access. In addition, at most of these sites, we provide infrastructure to allow the public to gain an opportunity to experience Scotland's birds and other wildlife. Most of our sites are part of the network of protected areas, so we recognise that public access has to be managed in such a way, which protects the important ecological features of these areas from disturbance and other forms of potential damage.

We are becoming increasingly concerned about the actions of irresponsible dog walkers in Special Protection Areas (SPAs) and Sites of Special Scientific Interest (SSSIs), where there are sensitive ground nesting birds or where disturbance events can impact on the notified ecological features of these sites. A paper that summarises research into the impacts of disturbance on the capercaillie, and mitigation methods adopted in Scotland and elsewhere, is available on request. As NAF members will be aware, the capercaillie is one of our most threatened and vulnerable bird species; and it is listed on Annex 1 of the EU 'Birds Directive' and Schedule 1 of the Wildlife and Countryside Act 1981. Other information, however, suggests that these concerns also extend more widely to other bird species.

Legal/policy context

Members will be familiar with the 2003 Act and the Code. However, it is worth re-iterating that:

S.9(d) defines "being on or crossing land while responsible for a dog or other animal which is not under proper control" as conduct that is excluded from access rights.

Current provision in Code (page 44 paragraph 3.55)) provides the following guidance: "You can reduce the likelihood of your dog disturbing ground nesting birds during the breeding season – usually from April to July – by keeping your dog on a short lead or under close control in areas where ground nesting birds are most likely to be found at this time. These areas include moorland, forests, grassland, loch shores and the seashore".

In contrast, in relation to livestock, the Code states (page 31, paragraph 3.30):

"do not take a dog into a field where there are lambs, calves or other young animals".

It continues (page 33, paragraph 3.34, after repeating the previous advice):

"if you take a dog into a field where there are cattle, then keep as far as possible from the animals and keep your dog on a short lead or under close control".

Page 42, paragraphs 3.53 *et seq* have more detailed advice about dogs and "proper control". Paragraph 3.54 highlights that "what 'proper control' means varies according to the type of place you are visiting'. This section also defines "under close control" as "able to respond to your commands and is kept close at heel".

The Wildlife and Countryside Act 1981 and the Nature Conservation (Scotland) Act 2004 impose obligations on everyone in relation to the disturbance of wildlife, and obligations on land managers responsible for Sites of Scientific Interest.

In particular, s.1(5) and (5A) make it an offence to intentionally or recklessly disturb any wild bird while it nesting, has dependent young or (important for capercaillie) is lekking.

Part 2 of the Nature Conservation (Scotland) Act 2004 accords a duty on SNH to notify Sites of Special Scientific Interest, and it is Government policy that it, and SNH, will seek to

ensure that 95% of the notified features are in favourable condition. Indeed, a great deal of SRDP and SNH resources are expended in supporting land management that seeks to secure such favourable conservation condition. All public bodies are required to exercise their functions to further the conservation and enhancement of these natural features (s.12). It is an offence, under s.19, to intentionally or recklessly damage any natural feature specified in an SSSI notification.

It must be noted that s.6(d) of the 2003 Act prohibits the exercise of access rights over land to which public access is, by or under any enactment other than this Act, prohibited, excluded or restricted. This clearly applies where a person purports to exercise access rights but, in doing so, is in contravention of s.1(5) or (5A) of the 1981 Act or s.19 of the 2004 Act. In addition, s.12 of the 2004 Act applies to SNH and all access authorities who must exercise their access responsibilities in accordance with the conservation requirements of the SSSI network.

Many SSSIs are also SACs or SPAs under EU legislation. Article 6.2 of the EU Habitats Directive requires member states to “take appropriate steps to avoid, in the special areas of conservation [and SPAs], the deterioration of natural habitats and the habitats of species, as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive”. In Scotland, this requirement is fulfilled by the exercise by Scottish Ministers and/or SNH of powers under the 2004 Act and/or the Conservation (Natural Habitats, &c.) Regulations 1994.

Finally, s.29 of the 2003 Act provides that SNH “may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable”. Scottish Ministers, SNH and/or access authorities also have various bye-law or order making powers under both the 2003 and 2004 Acts, as well as under the 1994 Regulations, to prohibit, restrict or otherwise manage access where this is necessary.

On page 106 of the Code, mention is made of how access rights apply to nature reserves. It is stated that “depending on your activity you might be requested to follow a specific route or to avoid exercising access rights in a specific area”.

Notwithstanding this extensive legal and policy context, our experience suggests that there is often uncertainty as to which restrictions apply where and what actions land managers and/or public bodies may take. Moreover, despite s.12 of the 2004 Act and the EU obligations mentioned above, there is often reluctance by public authorities to take action (the recent deliberations of the CNPA seeming to be an honourable exception).

The issue

RSPB Scotland is increasingly concerned about the impact of disturbance by dogs on sensitive bird species and protected areas, especially those managed as nature reserves. Clearly, such disturbance occurs when dogs are inadequately and/or irresponsibly controlled by their owners.

While the legislation and Code has much to say about dogs and their control in different situations, it can be confusing – and is certainly not well understood and adhered to. In particular, we are concerned that current guidance provided through the Code does not provide enough support for the responsible land manager from the actions of the irresponsible dog owner. In practice, this guidance is proving problematic to implement at a number of our and other nature reserves.

At Loch Leven NNR, Perth and Kinross, SNH has now provided a zoning model for recreation. The signage at Loch Leven NNR has been upgraded to stop disturbance caused by dogs in particular to the notified ecological interest of this site, including its breeding and wintering waterbird assemblages. It is understood that this action was taken following the witnessing by SNH staff of several incidents of dogs chasing wildfowl, and then on a precautionary basis. New core path networks, including TRACKS 2, are requiring Appropriate Assessment of their impacts on the SPA interest. This approach has provided some reassurance that action can be taken elsewhere where similar public access problems are being encountered.

At Aberlady NNR, East Lothian, local bye-laws allow the Council at this site to prevent access with dogs to the nature reserve area to protect wintering and breeding wildfowl and nesting terns. The Council has erected “no dogs” signs at entrances to the site, suggesting that those wishing to exercise their dogs go to more suitable nearby sites. It is understood that this guidance is widely respected by the public.

At a number of our sites, we are experiencing problems with access, particularly from irresponsible dog owners who do not maintain their dogs on a lead or under close control. We have taken steps to try and ask people politely to keep their dogs under control; discussed the matter with local community groups; and deployed SOAC compliant signage. This has not deterred hardened individuals, who purport to exercise access rights – but do so while inadequately controlling their dogs (thus, in effect being outwith of access rights). A number of our staff have suffered verbal abuse from the dog owners when seeking to encourage more responsible behaviour.

One area where dog disturbance appears to be particularly serious is Abernethy Forest, where research has demonstrated that disturbance (exacerbated by irresponsible non-control of dogs) has a significant adverse effect on the conservation of capercaillie. The exacerbation of disturbance issues by dogs is demonstrated by a study at Anagach Wood (SPA near Grantown-on-Spey). Here, the reduction in capercaillie activity near to tracks is less pronounced where the vegetation adjacent to the tracks is boggy (discouraging dogs from venturing off track – our experience is that, where woodland vegetation is natural and tracks are present, humans venture off-track very infrequently).

We have used signage at a number of sites, requesting that dog owners “keep their dog on a short lead or under close control”. The aspect of “close control” is in our experience open to wide definition, with some dog walkers claiming that if they can whistle their dog in from a distance it is under “close control”. We have taken this matter to relevant Local Access Forums and not received clear, definitive or consistent responses (although recent discussions at the Cairngorms LOAF has been very positive).

In all these cases, disturbance by dogs has been identified as an issue affecting:

- (a) the conservation of a vulnerable/sensitive species;
- (b) the achievement of favourable conservation condition for an SSSI (and/or Natura site); and/or
- (c) the management of a nature reserve that provides for the quiet enjoyment of the countryside, and its wildlife, for many members of the public without dogs.

Implementation of the Code, and management rules consistent with it, does however prove problematic – both because the Code is poorly understood (some would say confusing) or unknown. The enforcement of such an approach is difficult with staff being, at best, ignored and, at times, subject to considerable abuse. This is not just an RSPB problem. Others have received similar verbal abuse and the Anagach Woods capercaillie warden was even accused of harassment for asking someone to keep their dog on a lead.

Whilst the 1981 Act makes “reckless disturbance” an offence, this is often hard to prove in practice, particularly when dealing with irresponsible access with dogs and often the police have insufficient resources to address such matters. Indeed, in many cases, the actions may not, in themselves, prove to be criminal, but are clearly irresponsible under the Code, yet there is little, if any, action that land managers are able to take. At a recent meeting, in January 2010, of SNH’s Approved Bodies Group, which is responsible for helping to manage the National Nature Reserve network, there was a clear indication given that other land managers share the concern about irresponsible dog owners.

Notwithstanding the above, land managers have a legal [contractual] obligation to help meet the Scottish Government targets for the favourable condition of the features of designated sites. Other public authorities have a duty to help meet such objectives. Where the species is on Annex 1 of the EU Birds Directive, or the sites are part of the Natura network, Scottish Ministers and other public authorities have to meet the requirements of EU law in relation to disturbance. In this context, we think that breeding capercaillie, black and red throated divers, Slavonian grebes, dotterel and some raptor species are particularly vulnerable. Goose roosts may also be appropriate for such scrutiny.

National Access Forum: next steps

The National Access Forum is asked to recognise that this is a key issue where action is required. In our view, there is a need for clearer guidance (additional to the Code in the short-term, or amendment of the Code when/if reviewed) on a number of key issues. This must provide the land manager of protected areas with vulnerable notified features with greater confidence in taking the required action on the ground against irresponsible dog owners.

It is therefore recommended that a sub-group be formed to consider whether further guidance is required to:-

- (d) improve the interpretation of the 2003 Act and the Code in relation to dogs;

- (e) enhance the understanding of, compliance with and, if necessary, enforcement of the Act and Code; and
- (f) whether, longer term, any amendments to the Code should be considered.

Such actions should be focussed on the conservation of protected species and designated sites at risk from disturbance by inadequately controlled dogs. Other members may be aware of other issues that might be addressed.

Lloyd Austin and Duncan Orr-Ewing
RSPB Scotland
February 2010

Annex 2: Scottish Kennel Club paper

Increasing compliance with restrictions on dogs: the need for positive management

Paper to the National Access Forum meeting
on 24 February 2010 by the Kennel Club

1.1 Summary

Improving dog owner compliance with restrictions at sensitive times and places for wildlife, requires a more proactive approach to managing their access needs, by:

- Recognising and working positively with the desires of dog owners for off-lead access, close to home and away from traffic;
- Accepting that education and enforcement alone will not reduce the underlying desire for off-lead access; at best it can only displace it;
- Providing credible information that helps dog owners make positive informed choices about where they can responsibly take off-lead access;
- Better delivering information about restrictions, to avoid the current lack of clarity and credibility arising from Scotland-wide messages;
- Addressing the significantly different communication needs of visitors and local residents;
- Ensuring funding for better management matches this issue's importance;
- Long-term monitoring to more fully identify the success and impacts of increasing compliance with restrictions on dogs.

The above principles simply reflect good management for any access taker, that are now used in managing, eg, canoeing, access during the stalking season and wild camping. Dog owners want to enjoy their walks without conflict or feeling bad about their recreation; the majority will take the responsible option, if that option is available to them.

The accompanying journal paper "Influencing Walkers with Dogs: Three Years of Progress" gives links to the case studies, good practice and research that we have jointly-funded over the last 5 years with local authorities and government agencies, that underpin the approach herein. [Note: paper available from Forum Secretary]

1.2 The Kennel Club

Established in 1873, the Kennel Club (KC) promotes dogs' varied roles in society through, eg, its long established canine media contacts, education programmes, Young Kennel Club. It is the non-governmental organisation with responsibilities for the regulation of breeding, health and competition by pedigree and crossbreed dogs. It also runs Petlog, the UK database of microchipped pets.

Since 2003 the KC has been working with a variety of local and central government partners and NGOs (including the Forestry Commission and RSPB) to develop and apply more effective approaches to managing access for walkers with dogs in the countryside.

Given the National Access Forum's interest in dog issues, we came forward to be corresponding members in 2008. We are happy to contribute whenever needed, but did not feel it appropriate for us to become full members; we were happy to see the Scottish Canine Consultative Council take on that role more recently.

Using income from our registration and other commercial activities, and on behalf of the Scottish Kennel Club, we retain a Scotland-based access management specialist, who also works directly to local councils and government agencies on dog issues.

1.3 The Kennel Club's approach to access provision and management

The Kennel Club is a pragmatic organisation that seeks to work in partnership to develop effective and equitable management of access for all concerned.

We completely accept the need for restrictions on walkers with dogs (be they "on lead", or dog bans), at sensitive times and places for wildlife, providing such restrictions are proportionate, balanced and underpinned by the best available evidence. Whilst robust scientific studies into the actual impacts of, eg, pet dogs on bird populations are lacking (and will remain so given the difficulty of doing controlled studies), we are happy to take a precautionary approach, especially on sites with Natura 2000 designations, given that dog owners need to do their bit to conserve protected sites, given the many other threats to them.

In England the KC has worked closely with the RSPB to ensure past pitfalls of blanket national restrictions on dogs, and the use of imprecise terms like "close control", were not repeated in the Marine and Coastal Access Act 2009. Instead, agreement was reached to provide a balanced approach that links compliance with restrictions, with the equally important need to identify where dogs can be exercised more freely. This principle is very relevant to the situation currently faced under the Scottish Outdoor Access Code (SOAC).

1.4 The role of education

There is a clear role for education in improving compliance with responsible access taking by walkers with dogs; we are keen to support this and target information, for example, through our network of 136 Good Citizen Dog Training schemes across Scotland. We also equally commend the complementary work of the Scottish Canine Consultative Council.

We are pleased SNH are reflecting our advice to use existing canine communication networks and events for contact with dog owners; we know dog owners pay the greatest attention to advice from their vets and peers. However, education alone is always going to have a limited effect if it appears to be in complete and unavoidable direct conflict with dog owners' motivations for visiting the countryside in the first place.

1.5 The access needs of walkers with dogs

Research undertaken by TNS Travel and Tourism for SNH and the Forestry Commission Scotland shows that between 34% and 76% of all visitors to Scotland's outdoors have a dog with them; there is a dog in 23% of Scottish households.

A 2008 study undertaken by the Sport Industry Research Centre identified that the single most important access requirements for walkers with dogs, are "dogs can be off-lead" (41% of all owners), "away from traffic" and "close to home" (both 11%).

Whilst perhaps unpalatable to some, this primary demand for off-lead access, close to home and away from traffic, for such a major, year-round, daily taker of access, illustrates why management that does not engage with that reality, is always going to have a limited effect because:

- Requiring "on-lead" is a big "ask" in terms of changing behaviour.
- Education about birds, however professionally done and well-meaning, is unlikely to become a greater priority than the primary reasons owners want to go somewhere in the countryside with their dog.

- Enforcement and restrictions done in isolation will at best displace dog owners to other areas that may be less well warded, or lead to greater conflict with livestock and other visitors.
- It is a long-term project to change visitor behaviours that in many areas have been going unchallenged for generations.
- Dog owners are also now increasingly looking to the Animal Health and Welfare (Scotland) Act 2006 and their duty therein to allow their pets to “exhibit normal behaviour patterns” such as free running exercise and interaction.

1.6 Challenges in the Scottish Outdoor Access Code messages

Challenges to effective management are also presented in the current wording of the Code, both in detail, and given the overall perception from a dog owner’s perspective, that whilst the political spirit of this legislation was to increase access opportunities, it appears to have imposed greater restrictions on existing access taking.

The code’s core national messages also present difficulties in terms of credibility and national relevance, for example:

“Keep your dog on a short lead... during bird breeding season (usually April-July)” (SNH poster campaign, appearing to apply everywhere).

From April to July “...on a short lead or under close control in areas where these birds are most likely to be found. These areas include moorland, forests, grassland, loch shores and the seashore.” (SNH Walkies leaflet)

“... in recreation areas and other public places avoid causing concern to others by keeping your dog under close control or on a short lead.” (SOAC code booklet)

Whilst these messages are well-intentioned, from a dog owner’s perspective they are saying there are very few places where dogs can be exercised off-lead, and none between April and July; this is in direct, head-on conflict with the single, most important reason they have been taking access for decades before. This national message then lacks credibility when dog owners see, for example, pets being exercised on many beaches between April and July with no apparent challenge or detriment. The message also undermines the need for restrictions at other sensitive times, for example, over-wintering birds on the coast.

The problem is also exacerbated by the Code’s use of imprecise terms like “proper control” and “close control”, which are then repeated in literature to dog owners.

Finally, the Code’s messages also conflict with the 2005 Forestry Commission / Kennel Club concordat (that applies in Scotland as well as England and Wales) to: “Only seek restrictions on dogs (such as them being kept on leads or prohibited) in specific circumstances, such as... play areas and particularly sensitive times or places for wildlife”.

1.7 A better way forward for wildlife and dogs alike

To improve compliance with restrictions on dogs at sensitive nature conservation sites, a more effective way forward comes from management approaches that positively help dog owners to do the right thing, by the following principles:

1.7.1 Targeting restrictions where needed

SNH guidance already advises that targeting restrictions where they are needed, and being clear when and where they start and finish, provides the clarity and credibility that increases

compliance. Whilst no-one wants to see the countryside cluttered with signs, decisions must be made about the priority management aim: compliance or minimising signs.

1.7.2 Integrated access management: identifying alternatives

Where restrictions are imposed, dog owners will still be looking for off-lead access close to home and away from traffic. Good management of alternative areas will make such places more attractive destinations; better compliance will be achieved accordingly. Where there is no relevant accessible alternative site, accommodating off-lead access within the site, in the least sensitive area, can be the best way to conserve a site overall.

1.7.3 Locals and visitors: different approaches

Visitors with dogs present more opportunities to reduce conflict by giving better pre-visit information (eg www.pawsonthemoors.org www.petsonholiday.com). Pembrokeshire County Council gives dog-owners information before booking accommodation, showing that going to less sensitive places or visiting at different times, can give a better experience. This is then backed up by local information about where dogs can be exercised more freely once they arrive.

In short, to help nesting birds, dog owners need an answer to the reasonable question: "where can I exercise my dog off-lead?" Our mystery shopper exercises with information centres and rangers show such a responsible question often goes unanswered.

Local residents need a different management approach, as they will still be looking for nearby off-lead access, and are less likely to travel long distances each day. Such local audiences can be easier to target, but the demand by them to find off-lead access locally, needs to be recognised and addressed for success (eg www.dorsetdogs.org.uk)

1.7.4 Working with the benefits of dog ownership

Recognising the benefits of dog ownership is central to more effective management approaches. Whilst pet dogs undeniably can cause problems, which can be acute at a site level, the fact remains that owning a dog is a significant motivator for people to take regular healthy exercise in the outdoors at all times of year; dog ownership also helps older people and women feel safer in the outdoors and reduces social isolation.

A 2008 survey of landowners showed that alongside problems, over half could see benefits from dog walkers, including: early reporting of fires and animals in distress; deterring flytipping and anti-social behaviour. The Police have also engaged with dog owners to support rural "crime watch" initiatives.

Engaging with dog owners to promote the benefits of dog walking, as well as minimising the negative impacts, makes for much more influential and cost effective communication. The use of positive messaging is also more likely to attract commercial sponsorship (eg from dog food manufacturers), compared to approaches that only promote negative messages to their customers.

Positive approaches also make it far easier to gain the cooperation of dog owners in getting evidence, and then taking formal enforcement action (which the KC will support), against the hard core of dog owners who will not respond to a balanced approach.

1.7.5 Improving clarity

Using descriptions of the actual behaviours we want is a far better way to communicate; this also puts the responsibility on the dog owner to take whatever steps are necessary to achieve that outcome (reflecting the principles in SOAC). As such behaviours are measurable, they are also much easier for rangers and land managers to challenge.

Behaviour-based wording we now use in our own guidance includes:

- always keeping your dog in sight and using a lead if you don't have a reliable recall
- preventing your dog from approaching wildlife and farm animals
- keeping your dog out of crops like fruit, vegetables and cereals
- picking up after your dog wherever you are, unless signs say you don't need to
- always putting bagged poo in a bin; if there isn't a dog or litter bin, take it home
- stopping your dog from approaching other people, cyclists or horse riders, unless it's OK by them

In addition, non-compliant signage for dog owners still exists in many areas, which further erodes confidence in signage and SOAC credibility.

1.7.6 Monitoring

Despite having been taking access in the countryside for centuries, there is still much we do not know about the actual impacts, positive and negative, of walkers with dogs. Further monitoring and evaluation of the outcomes of management initiatives in Scotland, will be very useful in refining the most effective management approaches.

There is also a lack of data on what may be unintended impacts; for example, does reducing the number of dogs off-lead increase predation by, for example, domestic cats, foxes and hedgehogs? Does disturbance from other activities increase due to reduced site surveillance by dog owners?

1.7.7 Proportionate funding for initiatives

A constant source of frustration is when better managing walkers with dogs is described as a priority issue, but then the time and funding directed to it does not reflect that degree of claimed importance. SNH and local authority staff are doing their best and being increasingly creative, but until the resources allocated match this issue's importance, progress will not reflect what NAF members may reasonably expect. The result being that land managers and walkers with dogs at a local level, will continue to be in conflict over their legitimate mutual interests, which we know in truth can be managed better.

10 February 2010

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Annex 3: SNH paper - Encouraging responsible dog ownership in protected areas

Background

Dog walking is the main reason for which many people in Scotland visit the outdoors. The Scottish Recreation Survey indicates that during 2008, Scottish adults made 157 million recreational visits to the outdoors accompanied by dogs (corresponding to 41% of total visits). Among those who visit the outdoors, dog owners do so more frequently than non-owners (with 81% and 48% respectively visiting at least once a day). Dog owners are also more likely than non-owners to visit the outdoors without other people (56% versus 31% visiting alone), perhaps in part because of the security that a dog can provide. Access with dogs is therefore critical to many people's enjoyment of the outdoors and could play an important role in promoting more widespread participation. This activity can also benefit the natural heritage, allowing more people to encounter wildlife at first hand and fostering greater understanding and commitment to safeguard this resource.

This activity could also, however, have potential adverse effects on some aspects of the natural heritage – in particular ground-nesting birds, which are prone to disturbance by poorly controlled dogs. The balance of disturbance research indicates considerable variation between sites and species, with uncertain implications at the population level, but this factor could be significant at some locations with regard to some species of national or international conservation importance. In managing access on sensitive sites, the aim is therefore to maximise the positive and minimise the negative effects associated with dog walking. This paper summarises some of the management approaches that are available to help achieve this.

Promoting responsible dog ownership

Paragraphs 3.43-3.48 of the Scottish Outdoor Access Code provide general guidance with regard to the natural heritage, including the need to avoid "*intentionally or recklessly disturbing...birds*", and take "*extra care to avoid disturbing more sensitive birds...particularly during their breeding season*", noting that this may constitute a criminal offence. Paragraph 3.55 expands on this with respect to dogs, indicating that they should be kept "*on a short lead or under close control*" where ground nesting birds are breeding and that "*these areas include moorland, forests, grassland, loch shores and the seashore*". Close control is defined to mean that "*the dog is able to respond to your commands and is kept close at heel*". This amounts to quite strong guidance to dog owners which applies to a considerable area during the nesting season.

Promotion of the Code is being taken forward through SNH's access education campaign, which is currently focused on dog owners, alongside campers, as a key target audience. The focus for the 'dog' campaign is a reminder of good practice using three dog characters to convey key behavioural messages derived from the Code. The campaign has been modified for 2010 to include prominent messages relating to ground-nesting birds. This will include outdoor proximity poster advertising in public places close to vet surgeries, a mass distribution of 70,000 copies of the *Walkies* leaflet and dog passports which aim to convey these messages in an engaging way. SNH is also sponsoring dog training and other events in the Cairngorms, which will include novel approaches to convey conservation messages relating specifically to capercaillie.

SNH monitoring data suggest that dog owners are already more likely than non-owners to be aware of the Code (64% versus 52% 'definitely aware') and this campaign will aim to build on this foundation to promote responsible dog ownership at a national level.

Managing access with dogs in protected areas

If necessary, national promotion of responsible dog ownership could be supported by specific management in key protected areas, and the most effective strategy would probably vary from site to site.

Various well-established management options are available and some combination of these is likely to underpin any approach. These include on- or off-site education, guidance and interpretation, and site management through the provision and location of car parks, paths and other infrastructure, screening, 'diversionary' facilities (such as off-lead exercise areas), staff presence and signage, which could all be set in the context of a zoning approach. A range of behavioural messages could be used within the terms of the Code, notably by reminding visitors that dogs should be kept on a short lead or under close control in the relevant times and places.

Requests which go beyond the Code (for example to keep dogs on leads, or for some users to avoid particular areas at certain times) could be discussed with the access authority (who may choose to involve the local access forum) and any relevant local or national interest groups. If consensus can be reached, these measures can then be implemented as the type of 'agreed information' or 'voluntary agreement' referred to on pages 38, 39 and 119 of the Code. Evidence will clearly be important in supporting the case and the need will probably be broadly proportionate to the contentiousness of the proposed request. Agreement will probably also be easier if overall site management is sympathetic to the aspirations of dog owners and offers positive alternatives.

The present discussion at the Forum is set in the context of a growing interest, among various site managers, in the use of more regulatory approaches – which are seen as providing a more robust supplement to methods such as education and site planning. General criminal sanctions already exist through the offence of 'reckless disturbance' under the Nature Conservation (Scotland) Act 2004 (NCA), and it would also be possible to seek a civil injunction against individuals who repeatedly behave in an irresponsible way. It may be possible to make some reference to these sanctions to reinforce the key behavioural messages - which might be most effective as an adjunct to a more positive overall message.

Access rights can also be influenced or regulated in a number of other ways:

- management of Natura sites can move beyond the framework of the Code if the competent authority considers that this is required to avoid deterioration or disturbance of the habitats/species for which the site was designated;
- SNH's signage powers under Section 29 of the Land Reform (Scotland) Act 2003 (LRSA) or Section 41 of the NCA may be useful in certain circumstances, for example to take relatively rapid action to safeguard transient interests, and;
- byelaws (under various powers) or Nature Conservation Orders (under the NCA) could be used to modify the scope of access rights at particular places and times. The byelaw approach has the advantage of being widely understood by the public.

Although the precise context for each of the above approaches varies, a number of common considerations will usually apply:

- the case for regulatory approaches would need to rest, to varying degrees, on evidence of an underlying problem and of the need for such management action. Ongoing monitoring of visitors and of the key conservation interests would also be critical to allow management to be kept under review. A recent SNH commissioned research report,

developed in conjunction with various partner bodies, provides a useful framework to guide the monitoring of visitors at sensitive sites: <http://www.snh.org.uk/publications/online/heritagemanagement/sensitivesites/page01.asp>;

- the use of regulatory approaches would need to be supported by appropriate liaison with all relevant parties, in particular the access authority and key user interests. Effective ongoing communication with the key users would also be needed on the ground to explain why this approach was being taken and to encourage people to heed this request. This would both maximise support for the chosen approach and help to ensure its credibility, and;
- if used in isolation, regulatory approaches which create a specific offence (such as byelaws) will only be effective to the extent to which they can be enforced. Much of their potential value may therefore lie in underpinning and reinforcing other methods. The overall strategy will probably therefore continue to require (and indeed primarily depend on) on-site management as noted above.

These principles do not primarily arise from the access legislation but rather reflect the practicalities of managing people - and they would have been more or less equally relevant before the advent of Scottish access rights.

The Local Access Guidance that SNH has developed at Loch Leven relates in part to access with dogs. The guidance identifies specific areas where dogs can be let off the lead and allowed into the water, asks that they should be on a short lead or close at heel on the Heritage Trail which runs around the loch, and reiterates other messages about responsible dog ownership - including a gentle but clear reference to the dog fouling offence. This is supported by clearly seasonal signs (the time limit is important to both the credibility and perceived reasonableness of the message) which ask visitors to avoid particularly sensitive areas. This is summarised in an access guidance leaflet and tips for dog walkers which can be found at: <http://www.snh.org.uk/scottish/taysclack/lochleven/ll-access.asp>. As with other aspects of the guidance, the effectiveness of this approach is being monitored to support a process of ongoing review.

There may well be no perfect and comprehensive solution to the long standing issue of poorly controlled dogs, but the key elements of a successful strategy are likely to be effective consultation with the access authority, SNH and others, and a holistic overall approach including an ongoing commitment to communication with dog owners as the key user group.

Recreation & Access Group
Scottish Natural Heritage
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