

“Trespass” rears its ugly head at the Aviemore Centre

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“Trespass” is a particularly loaded word. It comes from the Old French “trespasser” meaning “pass beyond or across, cross, traverse; infringe, violate”. In English it came to mean “transgress in some active manner, commit an aggressive offense, to sin” – as in “forgive us our trespasses” used in the Lord’s Prayer – but is also used by lawyers to mean “enter unlawfully”. It was first used in this way in the Forest Acts passed by the Scottish Parliament in 1455 to stop people from hunting or taking products from the “Royal Forests” but later became a predominantly civil matter until the Criminal Justice and Public Order Act in 1994 created a new offence of “aggravated trespass”.

Until the Land Reform (Scotland) Act 2003, the issue was that while the law on trespass was very weak, because landowners had very limited powers to remove people from their land, most people didn’t appreciate this. While those in the know exercised a de facto freedom to roam, ingrained in many people’s thinking was the idea that by just stepping off the public road onto land owned by a private individual or body, you were doing something wrong. Access rights were supposed to get rid of all of that misunderstanding.

The principles behind the law as set out in the Land Reform Act are that people should be able to go more or less anywhere outdoors, so long as you are not disturbing a person’s privacy (hence why gardens are exempt), not entering outdoor workplaces (such as goods yards) and not doing damage (e.g through trampling over the middle of field sown with crops). The MacDonald Aviemore Resort, instead of trying to justify their attempt to exclude people by reference to the Land Reform Act, have resorted to claiming that passing through this gate would constitute trespass.

This is not justifiable under Section 6 of the Land Reform Act ([see here](#)) which sets out “land over which access rights not exercisable”. To be exempt, land associated with a building – such as the hotel here – either needs to form part of the curtilage of that building (the lawns right in front of the hotel) or to form a compound or other enclosure containing structures, works, plant or fixed machinery specified in the Act. Neither is applicable to the large expanse of tarmac in the photo or the areas on either side. If a family, for example, wanted to take their young children through the gate onto the tarmac to learn how to ride a bike safely or to sit on the grass on either side, the intention behind the Act was that they should be able to do so. If McDonald’s Aviemore Resort wish to prohibit use of this tarmac by motorised vehicles they need a different sign which makes no mention of “trespass”.

The specific issue in this case, just like the gate to the boatyard at Balmaha ([see here](#)), is that boundaries to properties are NOT the same as the boundaries where access rights apply. The wider issue is that seventeen years after the passing of the Land Reform Act, certain landowners still want to treat all the land their own as being their exclusive right to use and are trying to do this by dubbing people who step onto their land as trespassers.

We should be very concerned about this (I have reported the sign to the Cairngorms National Park Authority), particularly when the UK Government is considering whether to introduce a further law of criminal trespass in England. This would be a massive attack on civil liberties that would directly affect anyone who visits England. With the UK government at present trying to take back powers from the Scottish Parliament, it could affect access rights in Scotland too. We need to banish the word trespass in Scotland except in very specified circumstance where access is explicitly prohibited by law (e.g access along railway lines, across commercial airfields or in working quarries).

Category

1. Access rights

2. Cairngorms

Tags

1. access rights
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