

Unlawful signs, access authorities and the right to roam

Description



Signs in Glen Clunie, midway between the Glen Shee ski centre and Braemar, at the start of the track which leads up the Baddach Burn.

Signs in the countryside form part of the narrative about access and help shape public understanding about what the right to roam in Scotland means. Even if ignored by many, I find it hard to pass signs without taking a photo. Six weeks ago, on spotting a cluster of signs behind a Welcome to the Moor ([see here](#) for what is wrong with them) sign in Glen Clunie, I jumped out the car in the rain to take photos.



I had seen such signs before but it was only on reading them carefully afterwards that I realised the implications. While the Welcome to the Moor signs recommends that people should keep to paths and tracks “where possible”, these signs go further. They ask people, albeit politely, to keep to paths and tracks, full stop. In the case of the shooting sign, the advice to keep to the “main tracks and paths” is even more restrictive. Now consider the dates covered by this “advice”: from April to August you should keep to paths and tracks because of nesting birds; then from August to February you should keep on the main paths and tracks because of shooting. That, according to the Invercauld Estate, leaves the month of March when you are free to roam.

That advice from Invercauld, apparently endorsed by the Cairngorms National Park Authority, is incompatible what it says in the Scottish Outdoor Access Code (SOAC) ([see here](#)) about paths and tracks:

Responsible behaviour by the public

The Access Code says:

Access rights extend to all paths and tracks except where they go over land on which access rights do not apply. Rights of way are unaffected by the legislation. Access rights apply off-path, but when you are close to houses or in fields of crops or in places where the environment is particularly vulnerable to damage, it may be sensible to follow paths and tracks where they exist. This can help to facilitate access and help safeguard the interests of land managers and the environment.

Walkers, cyclists and horse riders can all exercise access rights on paths and tracks. However, on some paths, such as those which are heavily-used or which are prone to damage, the local authority may have provided local advice on what types of use are appropriate or how different users should behave to reduce risks to safety or to minimise damage to the path surface. Following such advice can help to minimise problems.

Responsible behaviour by land managers

The Access Code says:

You could work with your local authority and other bodies to help identify best routes across your land for land management and access purposes. Wherever possible, routes should be multi-use and maintain their local character. Avoid deliberately or unreasonably blocking paths or hindering access along them, if you wish to divert or close a path, follow any formal procedures if these exist. Avoid erecting any signs or notices that discourage access.

Effectively the SOAC advice says it may be sensible to follow paths and tracks close to buildings and fields, but says nothing about keeping to paths and tracks in open country like Glen Clunie. There is a reason for that, it would undermine the right to roam. So why are Access Authorities allowing such signs to proliferate?

Inadequate resources

Part of the explanation is capacity. Last week the Scottish Outdoor Access Network (SOAN) issued a news release ([see here](#)) revealing that the number of access officers in Scotland had reduced from 65.5 full-time equivalents in 2005/6 to 36.5 FTE this year and that six access authorities don't employ a single access officer. Between 2005 and 2016 the Scottish Government conducted annual monitoring of access officers (there were still 50 full-time equivalents in 2015-16). They then abandoned the surveys, a decision which has served to conceal the extent of the cuts. Despite all the failings in visitor infrastructure this summer, it was left to SOAN to conduct this year's survey with support from Ramblers Scotland. All 34 access authorities – 32 councils plus our two national parks – responded, so the survey is comprehensive ([see here for results](#)).

The survey shows our National Parks and Highland Council, with three access officers each, are the only authorities that still have an access team, in any meaningful sense of that word. Highland Council used to have nine access staff and, had they been in a position to keep that resource, many of the issues associated with the North Coast 500 might have been addressed. Those access officers that remain tend to have a wide range of duties including policy development (e.g Outdoor Recreation

Plans), path development, commenting on the access implications of planning applications and supporting Local Access Forums, where these still exist. Those duties may not leave much time to deal with bread and butter access issues, like locked gates and unlawful signs.

In the case of our two National Parks, however, which continue to be relatively well resourced, this is only part of the explanation for why misleading and unlawful signs are allowed to remain in place.

Inconsistencies in the ways our National Parks uphold access rights

In the last week the CNPA has informed me that the MacDonald Hotels have agreed to remove the no trespassers sign on the gate of their car park in Aviemore ([see here](#)). This follows agreement from Balmoral Estate to remove a sign there ([see here](#)). In both cases action has been taken quickly. Brilliant!

I have, however, got nowhere with getting the misleading advice to keep to the path on the Welcome to the Moor Signs removed. I suspect that is not just down to the Access Officers. I have heard through the grapevine that the Cairngorms National Park Authority may not actually have ever endorsed the signage, despite their logo appearing on it. For some reason they seem unwilling to act. A possible explanation lies in the the power of the moorland landowners and the influence they have on the CNPA Board which includes, for example, Douglas McAdam, former Chief Executive of Scottish Land and Estates.

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Sign from one of the motorhome permit areas on Three Lochs Drive, north of Aberfoyle, owned by Forest and Land Scotland.

There are similar issues about fairness in applying the law as it affects access in the Loch Lomond and Trossachs National Park. Recently I was asked if this sign was legal? It threatens campervanners with a £500 fine for breaching the camping byelaws if they stop at Forest Drive without a permit.

The legal position is that under the camping byelaws there was an exception that allowed people to stop and spend the night in a vehicle in the new camping management zones where this was alongside a road where there was a public right of passage ([see here for full explanation](#)). Effectively, this made the byelaws unenforceable against campervans, particularly as the LLTNPA had no register showing over which roads there was a right of passage. The LLTNPA then more or less ceased trying to enforce them the byelaws against campervanners and abandoned its designation of certain laybys along the main roads (e.g on the north side of Loch Earn) as campervanning permit areas.

However, it continued to issue permits to campervans for three areas, Firkin Point and Inveruglas, which it owned, and Forest Drive, owned by Forest and Land Scotland. I did question this a couple of years ago but did not follow it through because, as long as facilities were provided, I believe it was reasonable for FLS and the LLTNPA to charge for those using those facilities overnight. What I did not realise, until I was sent this sign, was that the LLTNPA and FLS were still threatening to turn any campervanner who did not apply for a permit into a criminal. This is I believe a serious misuse of the law.

Technically, the LLTNPA could argue that at Forest Drive there is NO right of passage because FLS has long locked the gates there at night and therefore the byelaws can be applied to vehicles there. That may be true but if the LLTNPA wishes to apply the camping byelaws to vehicles that are parked away from roads where there is a vehicular right of passage, then to be fair and consistent it needs to apply those byelaws to every static campervan (also classed as a vehicle) and commercial campervan park in the camping management zones. The byelaws allow for this, but the LLTNPA would have to individually grant exemption for every static caravan or caravan site in the National Park. They have never done so.

There is also a specific question about Inveruglas, where the campervan permit area is located by what was the former A82. Anyone referred to the Procurator Fiscal for staying there without a permit would, I believe, have a strong legal case that this, like the other laybys along the A82, is part of the road network and therefore that the byelaws cannot be applied to vehicles staying there overnight.

The LLTNPA glossed over these issues in their three year report on the camping byelaws to Ministers earlier this year ([see here – item six](#)):

“2.5 Motorhomes and campervans

At the time of proposing the byelaws there was also a need to better manage some of the larger, off-road lochshore parking areas and areas of old road found in the National Park. Some of these sites, particularly along the A82 trunk road on West Loch Lomond and A85 by Loch Earn were experiencing longer-term, seasonal encampments of larger vehicles and caravans (not as part of recognised Traveller communities) that had led to negative impacts on the local environment, visitor experience and nearby communities.

The initial introduction of motorhome and campervan permit areas on these stretches of roads in March 2017, was changed in June of that year following discussions with Police Scotland who proposed that that these issues would instead be managed under the Road Traffic Act 1988. Motorhome permit areas are still available under the National Park’s permit scheme (outlined in more detail in section 3.1) in certain areas of the National Park. These have been well used and received.”

Para 2.5 appears very carefully worded so the LLTNPA didn't have to come clean about whether it was

still threatening to criminalise any campervanner who failed to buy a permit in the remaining “permit areas”. I suspect that the Access Officers in the LLTNPA will be fully aware that that isn’t but have had their hands tied. Time to challenge the LLTNPA on the legality of these signs.

How do we put our rights to access the countryside onto a firmer footing?

What both the Welcome to the Moor and Campervanning signs show, in their very different ways, is that enforcement and protection of our rights to access the countryside don’t just depend on the capacity of access teams, however important that may be. It also depends on the willingness of senior managers and Board Members to uphold those rights and empower their staff to act. We therefore need individuals to keep reporting access issues, wherever they arise, and organisations like the Ramblers and Mountaineering Scotland, which represent outdoor recreationists, prepared to campaign to ensure that the law is rigorously and fairly applied.

Category

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2. Cairngorms
3. Loch Lomond and Trossachs

Tags

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