

The Scottish Outdoor Access Code, capercaillie conservation and the Cairngorms

Description

In 2014 the Land Reform Review Group published its report, the land of Scotland and the Common Good ([see here](#)). This contained a short section on access rights which concluded that generally they were working well:

- 11 The Review Group appreciates that some interest groups would like to see some particular aspects of the SOAC changed. However, while a review may be appropriate at some point in the future, the Group does not consider a review of the SOAC is warranted at this point in time. The main tasks at present should be the continued promotion of the Code to build on existing progress, and its improved implementation on the ground.⁹ In carrying this out, it is important that access authorities are taking account of the concerns of both land managers and access users. Among the issues raised with the Group were dog fouling and dogs not under control, blocked accesses, tensions between canoeists and anglers, damage by mountain bikes and horses and concerns about wild camping, as well as problems that can arise from commercial and intensive access use.

Since then, access rights have been challenged as never before, with the Loch Lomond and Trossachs National Park Authority leading the charge with its multiple assaults on the right to camp ([see here](#)) and the Cairngorms National Park Authority (CNPA) telling people to keep to the path ([see here](#)). It was concerning therefore when in February CNPA staff presented a paper to the Cairngorms Local Access Forum recommending messages that appeared to undermine the Scottish Outdoor Access Code (SOAC). This was the first LAF meeting that had been held for fifteen months ([see here](#)), although I have been subsequently informed by the CNPA that their LAF members did make certain decisions by email in July 2020.

Annex 2

Draft key messages for 2021

Target Audience	Current Message	Draft Revised Message
Dog owners	<ul style="list-style-type: none"> From April to August, keep your dog on a short lead or close to heel in areas of ground nesting birds. Avoid fields with livestock - particularly young animals. Clean up after your dog. Put any waste in a bin, or take it away. In more remote areas, remove it off the path. 	<ul style="list-style-type: none"> From April to August, keep your dog on a short lead or close to heel on moorland and the open hills. In woodlands with capercaillie, please follow all signage and keep you dog on a lead as requested. On farmland, please do not enter fields with young animals and avoid fields with cattle and sheep if you can.
Informal campers	<ul style="list-style-type: none"> Pitch your tent well away from cars, roads or buildings. Keep the numbers of your group small. Move on after a couple of nights. Remove traces of your camping site and any litter. Carry out what you carry in. 	<ul style="list-style-type: none"> Please follow all on site signage and advice from rangers. To camp responsibly do so away from roads and buildings, keep your group small and remove all traces of your campsite including litter.
Camp fires	<ul style="list-style-type: none"> Never light a fire during prolonged dry periods or in woodlands or on peaty soils. Never cut down or damage trees. Keep fires small, under control and supervised at all times. Ensure a fire is completely out and remove all traces of it. 	<ul style="list-style-type: none"> Do your bit for nature and choose not to light a fire, please use a camping stove instead. Never light a fire in woodlands or on peaty soils. Never cut down or damage trees.

The rationale behind Tread Lightly in the Park ([see here for full paper](#)), the campaign to make the public more aware of the Scottish Outdoor Access Code by promoting certain messages, is not a bad one. The problem was those messages appeared to depart from SOAC, although I was pleased to see that “Keep to the Path” was not on the list! My initial concerns were that the draft advice:

- asked for dogs to be kept to heel/on a short lead to avoid disturbing ground nesting birds until August, not July as specified in SOAC;
- asked people with dogs “to avoid fields with cattle and sheep if you can” when SOAC asks people to with dogs to avoid fields with young animals (which includes foals – left off the CNPA message – as well as calves and lambs);
- told people not to camp by the road when the revised advice issued by the National Access Forum in February ([see here](#)) states that: *“Tent-based camping is therefore a legitimate activity wherever access rights apply, including some locations close to roads, subject to responsible behaviour and any restrictions resulting from other legislation”*
- went beyond the SOAC in asking people not to light a fire and was highly hypocritical given that the CNPA allows landowners to deliberately burn vast areas of land in the National Park each year.

I therefore wrote to the Cairngorms National Park Authority and, after a couple of email exchanges, received a table setting out proposed revisions to the draft messages accompanied by an explanation

of how these related to the SOAC ([see here](#)). This was very welcome. I was particularly pleased to see that the wording for dogs had been changed to reflect what SOAC says about the sensitive period for nesting birds and when to avoid taking dogs into fields with animals. Whether these changes were a result of debate at the Local Access Forum meeting or my representations or a mixture of the two, I have no idea. The important point is that CNPA staff are prepared to engage and reflect and also, crucially, acknowledge that SOAC should be the central reference point for determining whether messages to visitors are compatible with access rights.

To their credit, the CNPA sent me a link to a paper ([see here](#)) written in 2010 discussing the question of just when it might be acceptable to “strengthen” the messages contained in SOAC about dogs. CNPA staff have clearly been thinking about this for a long time and have retained “organisational memory”. The importance of this cannot be over-stated. One of the biggest threats to access rights has come from new people coming in and believing they know best, without any understanding of the rationale behind the code.

Unfortunately, that appears to have happened with the proposed new message which asks people, wherever they may be in the National Park, not to light camp fires “for nature”. This goes well beyond SOAC and undermines one of the fundamental principles that lie behind it: that unless an activity associated with being on land (e.g berry picking, lighting fires) is unlawful or causes damage, you should be able to do it.

The SOAC clearly states that you should not light fires in woodland or on peat but the CNPA now wants to stop people lighting fires in the many places in the National Park where it is possible to do so without causing damage. If the justification in trying to restrict access rights in this way is to reduce carbon emissions, it risks setting a very dangerous precedent: why not then close public roads to visitors to reduce the much greater emissions from cars? Added to which is the hypocrisy of telling visitors to do the right thing, when the CNPA continues to support landowners who burn so much of the National Park each year. Far better to keep to the agreed SOAC messages about avoiding fires in woodland and on peaty soils and apply those precepts to landowners too.

Similarly, the CNPA messaging goes beyond SOAC in implying that you can only camp responsibly away from roads. I made two points to the CNPA about this. The first is that many people are either not equipped or not able to carry their tent away from roads and that the CNPA messaging therefore discriminates against people with disabilities. Second, that much of the land in the National Park is unsuitable for camping because of the nature of the ground and the vegetation. That means many of the best places for camping are along rivers at the bottom of glens and straths which also, because of geography, also provide the main transport routes through the National Park. As a consequence many of the best camping places are by roads and it is predictable that with staycations, holiday accommodation booked out or unaffordable and insufficient campsites, that many people will roadside camp this summer. Messages urging people to camp away from roads, while wrong in principle, are even less likely to work this summer than usual.

The CNPA appears to have partially recognised this with revised messaging for informal campers, “*Follow all onsite guidance*”. It is hard to conceive of where these “sites” might be, unless by the roadside. How successful onsite guidance can be in reducing impacts without provision of supporting infrastructure like mobile toilets remains to be seen. The attitude of Rangers remains crucial. Talking to people works better than lecturing them or trying to criminalise people as is happening in the Loch

Lomond and Trossachs National Park Authority ([see here](#)).

Carrbridge and the Cairngorms Capercaillie project

In responding to my question about why their messaging had departed from SOAC, the CNPA explained that the message about keeping dogs to heel until August was to help protect capercaillie, whose chicks are vulnerable for longer than other ground nesting birds. However, given capercaillie are only found in limited areas within the National Park, the CNPA appears to have recognised that its park-wide messaging should revert to the time-periods set out in SOAC. The SOAC then allows site specific guidance which, in the case of dogs and capercaillie breeding, could apply for the longer period of April – mid-August. The principle is the same as that behind the long-established and accepted practice of asking people not to climb on certain crags between specific dates to protect nesting birds. Instead of requiring dog walkers or climbers to exercise restraint everywhere, you just ask them to do so where needed.

Local messaging has now been developed by the Carrbridge Capercaillie Group, part of the Cairngorms Capercaillie Project ([see here](#)) which has received £2m from the National Heritage Lottery Fund to save the species from extinction once again in Scotland. The Group has just distributed a newsletter introducing two new signs. These go further in trying to restrict access than anything the CNPA had suggested to their Local Access Forum:

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The first version of the CNPA messaging had asked people to keep their dog “on a lead or close to heel”, whereas the Carrbridge Group message says dogs should be on a lead. One wonders if the gamekeeper employed by the Cairngorm Capercaillie Group will be asked to keep any dogs they use on a lead throughout the area? If not, that tells you this sign is discriminatory.

Note too its tone: instead of a request, it’s THANK YOU; instead of asking people to help, it’s capercaillie “must not be disturbed”.

All of this is causing a great deal of concern to local people who do have well-trained dogs used to walking off the lead. It raises questions about what right does the Carrbridge Capercaillie Group, whom I am sure are well meaning, have to put up signs telling others what to do?.

The evidence the Group cite for the need for this signage, as cited in the recent newsletter, raises further questions.

New signage trial in Carrbridge

Data from 2019's questionnaire for residents identified a widespread community perception that disturbance by dogs is one of the biggest threats to capercaillie survival, alongside habitat loss. So to give capercaillie more of a fighting chance at such a critical time of year, the Carrbridge Capercaillie Group have created two signs (overleaf) to trial in capercaillie sensitive areas around the village. Sign 1 aims to encourage responsible dog walking and Sign 2 aims to address the historic issue of people targeting a specific area close to the village to try and see capercaillie.

Carrbridge residents expressed concern about this ongoing issue through the public consultation on the Carrbridge Capercaillie Conservation Strategy:

"Disturbing a capercaillie lek and a brood are both wildlife crimes under the WCA 1981 as amended. It is crucial that birders are aware of this"

"Currently there is no deterrent at all, we should all be working towards a national park that doesn't have any wildlife crime."

While there have been instances of capercaillie being killed by dogs ([see here](#)) and increasing concerns expressed about this ([see here](#)), perception is not the same as fact. The section on the the Cairngorms Capercaillie Project about the causes of the bird's decline ([see here](#)) does not even mention dogs:

“Capercaillie numbers have fallen for lots of reasons including lack of habitat, low productivity, predation, collisions with unmarked deer fences and human disturbance.”

But maybe dogs are included in human disturbance? Transparent and clear evidence should underpin all attempts to promote messages that modify what is said in the SOAC.

The Group have then chosen to quote two sentences in their newsletter from people who responded to their questionnaire in 2019 which thought there was a need for a “deterrent” and that disturbing capercaillie should be treated as a wildlife crime. This is reflected in Sign 2, which is apparently intended for use off-path for birdwatchers “*heading deep into capercaillie territory*”:

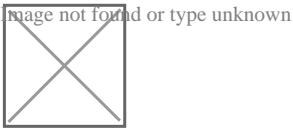
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At least the sign gets the law right: the offence is to “intentionally or recklessly” disturb protected birds like the capercaillie. The wording, described as “targetted and firm”, is designed to deter, rather than help. It appears the Carrbridge Group and the police want birdwatchers (or local people going for a walk in the woods) to think they could be committing a wildlife crime just by walking past the sign. Just who will be around to report such persons if the signs, as claimed, are deep in the forest and won’t be seen by most people is not clear. Perhaps this explains why the newsletter states it’s a trial sign and “If it doesn’t have the desired effect, it’s back to the drawing board”?

In my view the sign won’t work. If the issue is there are now too many birdwatchers coming to the Carrbridge area to spot a capercaillie, and in doing so they are disturbing them, it’s far to late to tell them this when they are “deep” in the woods. Indeed the signs will tell the determined birder who wants to see a capercaillie at any cost that they have found exactly the right place!

The sign goes a step further, and is much less helpful, than the advice aimed at birdwatchers which can be found on the Cairngorms Capercaillie Project website:



While this advice is also restrictive – effectively its advising people to keep to the path for almost five months of the year – it does advise how people can see capercaillie without disturbing them. That makes it helpful and more likely to be observed.

What's gone wrong?

The Carrbridge Capercaillie Conservation Strategy Action Plan Winter Spring 2021 ([see here](#)) committed to a number of actions to ensure capercaillie survival in the area including:

- *“Work with the community to identify areas to voluntarily avoid at sensitive times of year”;*
- *“Work with professional guides, birders and photographers to identify solutions”;* and
- *“Work with professional dog walkers to identify solutions”.*

Somehow, in a few short months, the approach has shifted from voluntary to compulsory, from working with people to telling them and from professional dog walkers to all dog walkers.

There is no doubt that the capercaillie is in serious trouble. The Carrbridge Action Plan reports just one chick was successfully reared in the whole of the Kinveachy Forest last year and one can understand why there is a strong desire to do something locally.

What has happened though is a small group of people have been left to develop “new messages” in a short period of time. Reading the notes of group meetings ([see here](#)), the wording for the signage was developed in just two weeks. As someone who has spent months negotiating and deliberating wording for signage with landowners, I can tell you that was asking for trouble and they did not have the right interests attending their zoom meetings. Unfortunately, the CNPA, as Access Authority, appears to have stood by and allowed this to happen and then endorsed the wording on the signs without due process, such as asking the LAF to consider them.

Part of the problem may have been that a former Access Officer for the CNPA now works for the Capercaillie Project and is on the Carrbridge Group. Perhaps the CNPA Access Team did not want to challenge a former colleague? The bigger issue in my view is the absence of a strategic approach to considering potential human impacts on capercaillie. The CNPA has known the capercaillie have been in serious trouble for years and are now more or less confined to the Speyside part of the National Park. So why just develop signs for this village and this wood and leave responsibility to a local group for doing so?

If the evidence now suggests that dogs may be the factor driving capercaillie over the brink, surely there need to signs informing dog walkers of the facts and asking them to play their part in saving the

capercaillie in every area of the National Park where capercaillie are found? And if the evidence shows birdwatchers now play a role in capercaillie deaths that was formerly attributed to fences and predators, surely that applies in all the capercaillie areas on Speyside? So why has the CNPA not led on developing signage and broader messaging for protecting the capercaillie across Speyside, that has involved and won support from all the relevant parties, is based on the principles of the SOAC and is based on evidence of what might actually work?

One can understand why there is a feeling among some residents of Carrbridge that their access rights risk being sacrificed because of all the people that have attracted into the area wanting to see a capercaillie by tourism marketing.

Category

1. Cairngorms

Tags

1. access rights
2. camping
3. Camping bye laws
4. CNPA
5. visitor management

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