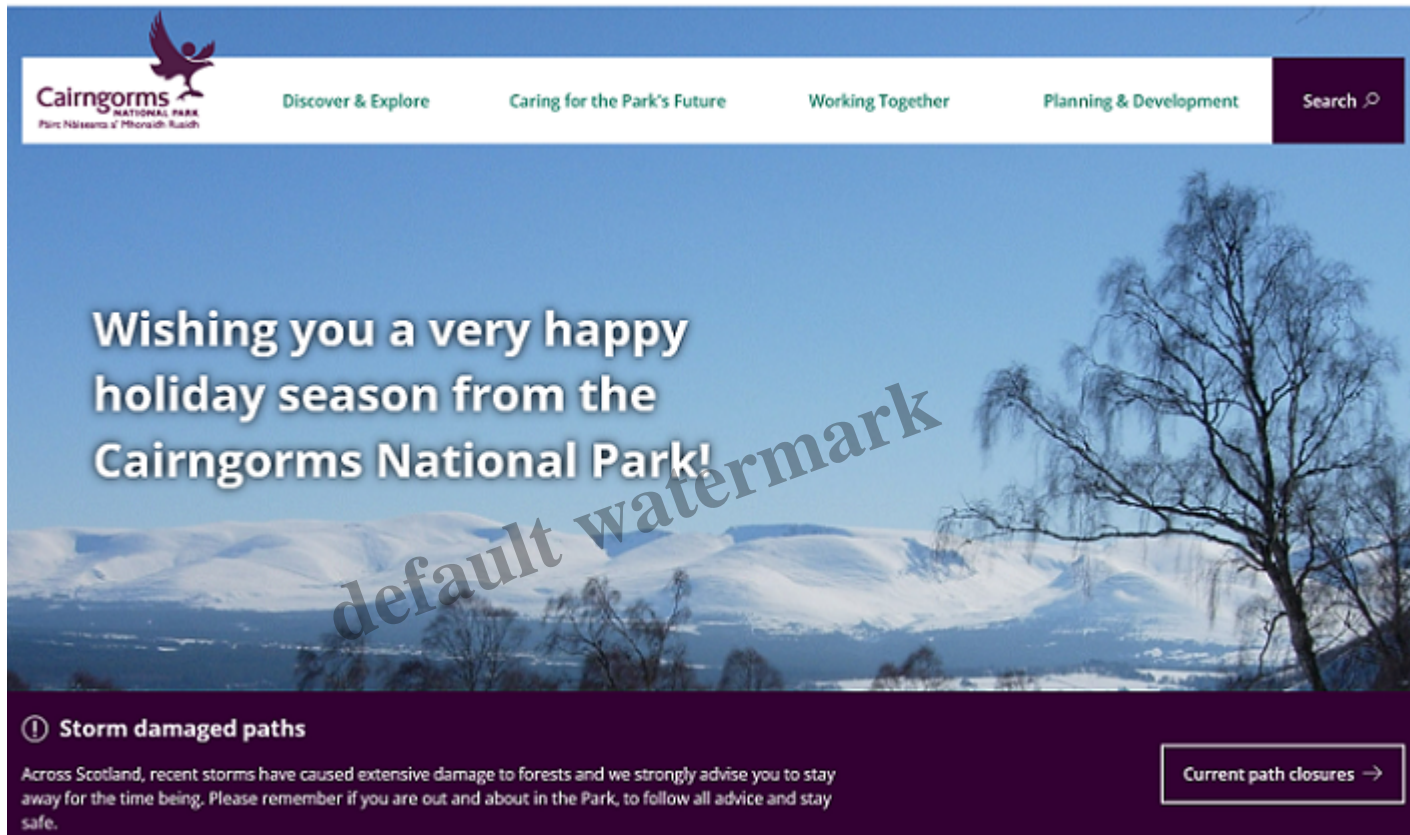


Storm Arwen and the Cairngorms National Park Authority's subversion of access rights

Description



Lovely photo, you can even see the White Lady, a useful reminder of how HIE has effectively destroyed downhill snowsports at Cairn Gorm through its failure to replace lift infrastructure. Screenshot 19th December.

Over three weeks after Storm Arwen, a message about storm damaged paths still runs across the Cairngorms National Park Authority (CNPA) website. Click on the link [Current path closures](#) and you are taken to two headings, "Temporary path closures" and "Current path closures." This post takes a look at how the CNPA is ignoring the law on access and at the dangerous thinking that reduces access rights to access over paths which, as I explained last week ([see here](#)) has been incorporated as a policy in the CNPA's draft National Park Partnership Plan (NPPP).

Storm Arwen and Forestry and Land Scotland (FLS)

Immediately after the storm, which wreaked havoc in many forests across Scotland, FLS issued a news release

[\(see here\)](#):

Public urged to stay away from forests after Storm Arwen



Monday, 29 November 2021

[Twitter](#)

[Link](#)

Forestry and Land Scotland is urging members of the public to stay away from its forests.

The call comes in the wake of Storm Arwen as the organisation continues to assess the levels of damage to Scotland's national forests and land and the associated risks to public safety.

The news release drew attention to the risks of fallen and unstable trees and stated FLS didn't want anyone to risk their personal safety by going into forests "until such time as we can declare them safe". But nowhere did this first news release claim that the land was closed. A day later FLS repeated [\(see here\)](#) what it described as "its plea". Not an order, note, a request. That was in accordance with access rights. Just as no public authority has the right to close mountains because of the weather, so no-one has the right to close forests.

By the following Monday [\(see here\)](#), however, FLS had got it seriously wrong:

Forestry and Land Scotland begins to open forests to visitors in the north and west



Monday, 06 December 2021

[Twitter](#)

[Link](#)

Forestry and Land Scotland is beginning to open up some of the national forests to visitors after Storm hit at the end of November.

But it is also advising that many forests will remain closed as more high winds over the next few days the risk of more falling trees in vulnerable, storm battered forests.

Note how this news release states that FLS claims it can open and close forests: these are powers

that FLS doesn't have. What it should have said was that in its view some of its forests were now safe but it was advising against visiting others because of risks of falling trees.

While there is nothing on FLS' main web page for visitors ([see here](#)) about Storm Arwen, drill down to particular forests and there are several variations on a notice claiming forests have been closed or recently re-opened. For example, under Glen Doll in the Angus Glens:



Latest forest information

Forests all across Scotland have been seriously affected by recent storms. We are doing everything we can to make our forests safe for visitors, communities, forest businesses and our staff. However, many of our forests remain closed while others have significant diversions and access restrictions for the foreseeable future. Please keep safe and follow all closure notices and safety signage.

Take care on or around open water. Find out more on our [Water Safety page](#).

Car park & site closure: There is significant windblow across our Tayside forests. Unfortunately, this forest will be closed to visitors while we make safety assessments of our trail and path networks.

Screenshot 19th December

This too is wrong and FLS certainly has no power to close trails until such time as it gets round to making a safety assessment.

The law on path closures

Under section 11 of the Land Reform (Scotland) Act 2003 ([see here](#)) access authorities, i.e. local authorities and our national park authorities not Forestry and Land Scotland, have the power to temporarily close paths and exempt land from access rights for a period of up to six days, through what are known as Exemption Orders. For any period longer than that the access authority has to seek approval from Scottish Ministers. While many local authorities, including Highland Council ([see here](#)), issue guidance to the landowners on how to apply for an exemption order, there appears to be nothing on the CNPA website.

The CNPA's response to FLS' attempt to close its forests

Temporary path closures

Outdoor Access

6th December, 2021

Forestry and Land Scotland advises that visitors stay away from all of their forests for now. In the north and western areas of the Cairngorms National Park, Forestry and Land Scotland, (FLS) manages Glenmore Forest Park (including Loch Morlich Beach and the Green Lochan), Invereshie and Inshriach forest, Uath Lochans, Feshiebridge, Laggan Wolfrax mountain bike centre, Dun de Lamh and Pattack Falls.

There are reports of a number of trails and roads which have been blocked by fallen trees in these forests and FLS is working hard to inspect the trails and clear them. In the event of a safety incident, emergency services would be unable to reach many areas. FLS will update its web pages as more information is available and you can search for up to date information, including forest notices on all FLS-owned forests at www.forestryandland.gov.scot/visit

The advice under this heading to stay away from forests is within the law, but the heading was wrong and totally inappropriate. The CNPA had not closed any paths and in any case FLS had been advising people to keep away from forests not paths. But that mistake becomes comprehensible when you understand that there are staff within the CNPA who ONLY see access rights in terms of paths – like Rights of Way in England – and don't believe they extend elsewhere.

As proof that the CNPA was acting ultra vires, beyond its powers, here is the same notice as it appeared on 19th December:

Temporary path closures

Outdoor Access

17th December, 2021

Forestry and Land Scotland advises that visitors stay away from all of their forests for now. In the north and western areas of the Cairngorms National Park, Forestry and Land Scotland, (FLS) manages Glenmore Forest Park (including Loch Morlich Beach and the Green Lochan), Invereshie and Inshriach forest, Uath Lochans, Feshiebridge, Laggan Wolfrax mountain bike centre, Dun de Lamh and Pattack Falls.

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Under the law on exemption orders, any closure of more than 6 days has to be approved by Scottish Ministers. The CNPA has not done that and this notice subverts the law on access. Instead of challenging FLS about its claims that forests within the National Park were closed, the CNPA compounded the mistake.

Not only that, but while FLS has at least updated its website to say when it has checked forests and believes it is safe to visit again, the CNPA is still claiming those forests are "closed":



Latest forest information

Forests all across Scotland have been seriously affected by recent storms. We are doing everything we can to make our forests safe for visitors, communities, forest businesses and our staff. However, many of our forests remain closed while others have significant diversions and access restrictions for the foreseeable future. Please keep safe and follow all closure notices and safety signage.

Take care on or around open water. Find out more on our [Water Safety page](#).

Updated 15 December 2021

- All trails within Glenmore Forest Park are open. If you would like to report an issue on any trail, please email us at enquiries.north@forestryandland.gov.scot.
- Fires and barbecues are not permitted at Loch Morlich.
- Please plan ahead and book a campsite for overnight stays. Overnight parking is not permitted in the Beach Car Park.
- The beach toilets are currently closed and will re-open in spring.

On 15th December FLS declared Glenmore is safe but on the 19th the CNPA was still claiming it was “closed”. A very good reason why the Land Reform Act only allows access authorities to exempt land from access rights for up to six days is to pre-empt this sort of bureaucratic bungling.

The section on the CNPA webpage below the Temporary path closures continues the muddle:

Current Path Closures

- Glenlivet – The Carn Diamh Circuit (Walk 5) and the Clash Wood Path (Walk 9) are both closed due to significant and dangerous wind blow. Please follow all signage across Glenlivet Estate and exercise caution and vigilance when accessing any wooded areas.
- Glen Tanar – Riverbank path closed, downstream from Visitor Centre. Please do not use this path.
- Braemar – Queens Drive path- significant wind blow that is being moved please follow all on-site signage and diversion
- Glen Doll – Car park and all trails currently closed to significant wind blow.
- Atholl – Atholl Estates Ranger Service asks that you exercise caution and vigilance while accessing their woodlands until they have fully assessed any damage caused, and undertaken the necessary work to ensure the woods and trails are safe again

1 file

- [Craigellachie National Nature Reserve - Path closures from 18 October 2021 - PDF Download](#) (637.22KB)

Three of the bullet points, on Glenlivet, Glen Tanar and Glen Doll, repeat the ultra vires claim that paths are closed. There was no need for this. What the CNPA could have done was to advise where paths were blocked or dangerous because of fallen trees and suggested potential alternative routes.

There is a significant difference legally between stating a place or path is closed and advising people to avoid a place or path for a specific reason. In the bullets on Glen Tanar and Glenlivet, the CNPA manage to say both!

The message for the Queen's Drive path at Braemar is better, it helpfully requests people to follow a diversion. The message from Atholl Estate Rangers is better still, asking people to exercise caution and vigilance – exactly right – and without any mention of closures. That the CNPA thought it appropriate to treat the Atholl Rangers advice as a “current path closure” is astonishing.

Conclusion and what needs to happen

FLS has engaged with recreational organisations for 20 years now on forestry signage. It should have known better than to try and close whole forests but I can understand them panicking after Storm Arwen given the potential for accidents and legal claims. In such circumstances, the job of our access authorities should have been to remind FLS of the law, including the fact that the right means of dealing with the issues is through section 15 of the Land Reform (Scotland) Act ([see here](#)) which allows signs or fences to be erected to warn or protect the public from danger.

Had FLS needed time to check the position on the ground and put up the necessary warning signs, they could have requested – or the CNPA could have suggested – a section 11 Exemption Order to cover the first five days. But that didn't happen and after that both FLS and the CNPA have acted unlawfully in claiming land and paths are closed without seeking ministerial consent.

This is a serious misunderstanding of access rights and a number of things now need to happen:

- the CNPA Board and the Cairngorms Local Outdoor Access Forum need to review what has gone wrong and take steps to ensure such mistakes don't happen in future;
- more specifically the CNPA Board needs to ensure that in future its staff clearly distinguish between advice and measures that, under the Land Reform (Scotland) Act are governed by legal processes, such as path closures;
- the CNPA then needs to create a clear process, as local authorities have done, for landowners to apply for Exemption Orders and set up a public register for any such orders that are made in future;
- the National Access Forum, which includes representatives of recreational organisations, must conduct an inquiry into what has gone wrong and the lessons for the future;
- and, most importantly, the CNPA needs to revise the policy in its draft Partnership Plan which attempts to reduce access rights to a matter of access along promoted paths.

Category

1. Cairngorms

Tags

1. access rights
2. CNPA
3. Forestry and Land Scotland

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