

NAF SUB GROUP - OUTDOOR ACCESS WITH E-BIKES: Note of the sub-group meeting held virtually on 20 November 2020

Present:

Janice Winning (NAF Secretary); David Howat (NAF Convenor); Don Milton (NAF Convenor elect); Bridget Finton (NatureScot); Phil Whitfield (Forestry and Land Scotland); George Menzies (Scotways); Jason Rust (SLE); Graeme MacLean (DMBinS).

Apologies:

Emma Steel (SLE), Alan Dron (Police Scotland), Paul Timms (Cycling UK)

1. Purpose of meeting

The sub-group agreed the purpose of the meeting was:

- i) *‘to consider the growth of e-bikes in the Scottish context, and the implications for outdoor access;*
- ii) *to provide recommendations and report back to the Forum’.*

2. Resume of current position & relevant updates

Discussion covered a brief resume of the current position and updates in relation to the following areas:

i) Legal position

The Forum currently accepts a legal opinion obtained in 2014 by SNH which states ‘that electrically-assisted pedal cycle are not motor vehicles for the purposes of the Land Reform (Scotland) Act 2003 - and so are not excluded from access rights’. However the sub group heard from Scotways that this has since been placed in doubt by other legal teams at Shepherd and Wedderburn and by Malcolm Combe (author of the Scotways Guide on ‘access and the law’). This uncertainty is not helpful, but ultimately will only be clarified by legislation or by an application to the courts. In the meantime, the group discussed the need for NAF to agree/revisit its position prior to producing any guidance. Whilst it was useful to understand the legal position, some members of the sub group thought that NAF already has a strong, well balanced position and that court scrutiny would be a long and costly process.

ii) Growth of E-Bikes

The group noted that e-bikes are now widespread on and off road, with numbers continuing to rise. The expectation is that this will continue with post-Covid latent demand adding to sales next year. Feedback from National Nature Reserve managers showed that about a third of sites had reported an increase in e-bikes but any concerns raised about erosion or shared use were thought to be from off-road biking and not specifically related to e-bikes. Similarly on the Forest Estate e-bikes now went further and were able to access more fragile habitats so there is a growing need to plan for this to ensure the growth is sustainable. Reports from landowners had not noted concerns about e-bikes to date, however this was thought to perhaps be more of an issue in peri-urban areas. Other negative impacts such as disturbance to livestock and possible danger to other access takers were however noted.

iii) Benefits of E- bikes

There was widespread recognition of the benefits of e-bikes within the sub group from; getting more people outdoors to enjoy the countryside and be active, thereby meeting many government health objectives, as well as the importance for active travel and green travel options. Green Health Partnerships and health practitioners are increasingly using e-bikes along with walking and cycling to promote a more active nation generating a new audience of access takers. There was also discussion about the economic benefits from the growth of e-bikes and the desire for Scotland to maintain its position as a world leader in cycling/MTB

provision. Overall, the benefits were positive and recognised but had to be balanced against the disadvantages identified by the limited reporting to date, and potentially arising as the number of e-bikes increases. However the group agreed that there was still a lack of understanding about how to maximise the positive effects whilst minimising the negative effects of e-bikes, hence the need for more research.

iv) E-bike research

The initial research bid now has support from the UK countryside agencies, British Cycling, Welsh Cycling, Scottish Forestry, Forestry & Land Scotland and a funding package is largely now available for the research to proceed. Feedback from NAF and SOAN would be sought as part of the research and it would take account of differences in access legislation north and south of the border. The research would hopefully shed more light on the volume and patterns of e-bike use and the implication for site management as well as the impacts on fragile habitats. Other updates were that the cycling and mountain biking industry are very keen to be involved in the research and further meetings were planned with this sector.

3. Potential action by NAF and next steps

The group discussed the possibility of developing a specific NAF e-bike guidance note as well as promoting good practice and discussed what form any guidance might take. Whilst a guidance note was thought to be helpful, it was felt that it would be beneficial to wait until the research had been concluded and the findings known. Existing SOAC guidance for cycling and MTBs was considered to be relevant for e-bikes and that there were merits in keeping any supplementary advice together rather than duplicating existing advice. The existing advice for mountain biking 'Do The Ride Thing' was developed by DMBinS working closely with mountain bike users which is thought to have led to its wider acceptance. This approach to encouraging responsible behaviour by potentially a new audience, unaware of SOAC, could be valuable both for e-biking and in a wider context. The Scottish Outdoor Access Network (SOAN) were identified as having an important role to play in any wider promotion.

In summary, it was agreed that a note of this meeting would be presented to the Forum in January along with the following recommendations:

1. That NAF confirms its current pragmatic position based on existing legal advice that e-bikes are within access rights until any further substantive advice is received. It was recognised that further legal clarification would indeed be welcome but this could be time consuming and expensive.
2. As good progress is being made on the development of UK wide research, NAF should await the findings from the research before developing any further guidance.
3. The development of short NAF guidance in due course to support existing SOAC guidance would be helpful. Wider SOAC promotion to new audiences post-Covid would be important.