

The alteration and meaning of the camping byelaws

Description



Unlawful sign, Loch Lubnaig, last Sunday. Even if the camping byelaws come into force next week, s will still be unlawful because camping is not banned for the whole year even in camping management sign has been up for several years and National Park staff must have passed it frequently but none h action. That tells you something about the LLTNPAâ??s attitude to access rights.

Alteration of the camping byelaws

The camping byelaws that now appear on the Loch Lomond and Trossachs National Park website ([see here](#)) differ significantly from those approved by the Loch Lomond and Trossachs National Park Authority Board and then sent to the Minister ([see here](#)). This came as a surprise to me because the

then Minister, Aileen McLeod, in her letter to LLTNPA approving the byelaws ([see here](#)) only made one formal modification to the byelaws, reducing the length of time they apply by one month. I have asked the Scottish Government civil servants if they made the changes but they have treated this as an FOI request which means they can delay responding for a few weeks.

I had not picked up on these changes when previously commenting on the wording of the byelaws (my apologies to readers for this), and the changes do have some implications of what I wrote on campervans ([here](#)) and ([here](#)) and lighting fires. I have detailed all the changes in a line by line [comparison](#) of the byelaws approved by the Board with those that have now been published.

The most significant changes are:

- Instead of saying "no person shall sleep overnight", the byelaws now say **it shall be an offence!** This makes it crystal clear that the purpose behind the byelaws is to criminalise people simply for camping (with a £500 fine and criminal record) although senior Park staff keep claiming in their usual parkspeak there is not a ban.
- Instead of stating that people sleeping overnight in vehicles are exempt from the byelaws if the vehicle is on a public road or car park operated by the roads authority the exemption now applies to people sleeping overnight in vehicles on roads, as defined by the Roads Traffic Act 1984. Under that Act the definition of a road includes both public and private roads. This means that the exemption for campervans and caravans is far wider than I had previously stated although, to add to the confusion, the ability to stop overnight in carparks operated by the roads authority may have been reduced (FOI requests have established there are not that many carparks operated by the Roads Authorities in the National Park and in most of them overnight stays have been banned under the Road Traffic Acts).
- The definition of "damage" which was used in the Your Park consultation and rejected on the advice of SNH has been re-introduced to the byelaws. (SNH have not been consulted on this I have checked or any other changes since the byelaws were approved by the Board).

In my view, none of the process through which the camping byelaws have been developed is legitimate (e.g the LLTNPA failed to consult their Local Access Forum, a statutory consultee, before they had decided what they wished to do, fiddled the results of the byelaw consultation process, took decision outside public Board Meetings etc). The whole process would make an ideal case study of how the process of good government can be corrupted. However, that civil servants and LLTNPA staff appear to have taken it upon themselves to "improve" the byelaws (if the Minister made these changes she surely would have stated this in her letter) hits a new low and is an absolute indictment of the way officials, who are meant to serve the public, operate.

Whether this could be successfully challenged legally I don't know, but it raises serious issues about how byelaws are created. Byelaws are serious, they can criminalise people, but unlike other criminal laws they are not scrutinised by the Scottish Parliament and then decided democratically by majority vote. Instead, it appears civil servants have the power to alter the wording, and thus the extent and effect of what becomes criminal, on a whim. They have not even consulted SNH the Government's statutory adviser on access rights. This is totally wrong.

The meaning and likely impact of the changes in wording

The changes to the camping byelaws have not made them any clearer, will have unintended consequences and raise further issues about enforcement.

Campervans and vehicles

The change of the scope of the exemption to allow people to sleep overnight in vehicles to include private roads, opens up far more and better areas for campervans and caravans to spend the night. I had previously commented that campervans might be forced into villages, as these were the one place you could be certain you were on the public roads network. That now appears less likely as generally private roads offer more attractive places to spend the night than public roads. To give one example, who would not rather pull onto the private road leading to the Ben Ledi carpark (in the Trossachs North camping zone), where cars already park in the day, rather than spend the night on the verge of the busy A84 through Strathyre?

There are dozens of private roads in the National Park, so this change probably drives a coach and horses through the byelaws – a good result if unintended in my view – but the problem is what counts as a ‘private road’. For example, what about tracks down to jetties on the loch side? I suspect they do count as they are obviously going somewhere, but what about a vehicle track down to a loch used by the owners to go fishing? Because of this uncertainty, one possible consequence is campervaners will stop off on the verges of the most obvious private roads, which are usually those leading to houses, rather than places they would prefer to stay.

Originally one of the main claimed purposes and justifications of the byelaws was to prevent overnight stops and encampments in laybys and the LLTNPA sold the byelaws to local communities on the basis that they were all about keeping anti-social campers away from where people lived. While the Park has gone very quiet on campervans and motorhomes, there is a little give away on the ‘camping’ section of their website:

In order to protect some of our most cherished lochshores, [byelaws](#) covering camping and firelighting are in place in certain areas from March to September.

*During this time, you will need a permit to camp or **(in some locations)** to stay overnight in your motorhome in these [Camping Management Zones](#).*

What I believe I have shown is the locations where people will be unable to stop off overnight in a vehicle are probably very few. While the changes to the byelaws appear to have made it more difficult for people to stop off overnight in vehicles in carparks, as even carparks run by the Roads Authority are no longer exempt from the byelaws, anyone can now in theory stop off on the private roads leading to car parks!

The problem here is the legal position of where people can and cannot stop overnight in vehicles is totally unclear. First, the Park has completely failed so far to say what counts as a private road or not, and I doubt it will ever be able to do so, the legal position is far too complicated. What instructions it has issued to its Rangers, who are supposed to enforce the byelaws, so they don't hassle or try to refer people to the Procurator Fiscal who have not broken the byelaws, is unclear. Second, how will the public know unless there is a sign by every private road? There is no plan to do this and the cost would be prohibitive. People sleeping in vehicles therefore will find it very difficult to know where they stand. It may all come down to who is prepared to stand up for their rights and challenge the LLTNPA. This is all wrong.

SNH in their response to the camping byelaws stated this quite clearly:

• The byelaws must be reasonable, proportionate and clear (the actions that are an offence) if they are to command support from the public.

The camping byelaws are not reasonable, proportionate or clear about where people can sleep overnight in campervans and vehicles. These byelaws would never have been passed if they had been scrutinised properly, for example by the Scottish Parliament.

Damage caused by fires and collecting wood

What the re-introduction into the byelaws of the definition of damage rejected by SNH does is potentially to make any fire within a management zone unlawful. The problem here is twofold: what constitutes damage or what activities could be said likely to cause damage is subjective; and how will the Park let people know what is responsible? I had asked the Park some time ago about the meaning of the word "damage" in respect of fires before realising a definition had been re-inserted into the byelaws, and received this response [EIR 2017-001 Final Response fires](#). Its still relevant as the Park was responding based on the definition of damage inserted into the byelaws. It failed to provide answers to any of the scenarios I had raised and its unclear which of them could turn you into a criminal.

Since the response, the Park has added information on what constitutes damage caused by fires and collecting wood to the camping section of the Park website (under permit terms and conditions) ([see here](#)). If you are not camping but simply going for a picnic or staying in a vehicle overnight on a road and want to have a fire, you are unlikely to have any idea of this or what activities could turn you into a criminal. While the Park could improve the information of their website, the much more serious issue is how will people know what is lawful unless there are signs everywhere spelling out what is and is not allowed in respect of fires?

The information contained in the terms and conditions for camping permits suggests that the LLTNPA is now interpreting "any damage" to mean that if you burn wood that you find, that is criminal offence, but its ok to bring your own. If that was the intention of the byelaws, it would have been clearer if they had simply said what is in the permits: "Should you wish to light a fire, you must bring your own firewood and kindling". After spelling out the offences you could be committing, the terms and conditions include a section on "Advice for Campers" which is far more like the Scottish Outdoor Access Code. However, taken with the all-encompassing definition of damage in the byelaws themselves, this "Advice" just adds to the confusion:

Wherever possible use a stove or fire bowl.

If you have an open fire keep it small, on a surface that cannot be easily damaged, under control, supervised and bring you rown wood,or other kindling

Comment: so when does having an open fire count as causing damage and a breach of the byelaws which will turn you into a criminal? So when will Park Rangers count open fires as causing damage with breaking the byelaws and try and turn them into criminals? I am none the clearer from reading this. It will probably depend on the Rangers who's on duty at the time. That is totally wrong.

Enforcement Policy

The lack of clarity over the meaning of the byelaws, and therefore what activities are and aren't legal, raises issues about enforcement. I have been asking the LLTNPA about this for some time and in January received [EIR REVIEW 2016-057 Response-1 Enforcement policy](#).

The most important part of this letter which is full of the usual obfuscation is the statement at the end:

Finally, given your interest in the enforcement of the byelaws, the Your Park project team is currently in the process of developing an Enforcement Policy. This will be released to the public in due course via our website

It will be interesting to see if this policy provides clear guidance to Park rangers on all the issues that have been raised on Parkswatch but the most important thing here to note is that any Park Policy should be scrutinised and then approved by the Board. The camping byelaws thus cannot be enforced on 1st March as there is no Board Meeting scheduled till mid-March.

I would go further and suggest that the Minister for Environment and Ministers for Justice in the Scottish Government should comment on this policy before it is put into effect because of the significant implications for who could be made a criminal or not. Were Ministers to do this, and not rely on opinions of their civil servants, they would realise the byelaws as they relate to campervans and sleeping overnight in vehicles are unworkable and, as a consequence of this, there is a complete lack of parity between how campers and campervaners are affected by the byelaws which undermines their whole rationale.

What can be done?

Its only a matter of time before someone decides to challenge the legal basis of the byelaws. As soon as someone is referred to the Procurator Fiscal for lighting a fire or sleeping in a vehicle for example, it should be possible to challenge the LLTNPA without incurring great costs.

The LLTNPA's success in enforcing these byelaws mainly depends on bluff. This is not just about the impossibility of enforcing badly worded byelaws, the Park clearly wants to make camping in a tent in a management zone a criminal offence, but if the Park tries to refer lots of innocent campers camping according to the Scottish Outdoor Access Code to the Procurator Fiscal, their reputation will collapse. If people call the Park's bluff, the byelaws will collapse.

In the longer term we need to prevent this situation recurring. A good way to ensure this would be if ALL byelaws affecting access and thus access rights could be called in for scrutiny by the Scottish Parliament.

Meantime, people could follow the excellent advice from Cameron McNeish in his article on Walk Highland and write to Scottish Ministers asking them to intervene

[A look to the future?](#)

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