

Revoking the east Loch Lomond camping byelaws

Description



The signs for the east Loch Lomond byelaws 2011 were still up on 1st March when the new camping byelaws came into effect

The east Loch Lomond camping byelaws 2011 should have been repealed before the new camping byelaws came into effect on 1st March. (In fact they should have been repealed completely, not replaced, as they had only ever been agreed as a temporary measure ([see here](#))). However, the Loch Lomond and Trossachs National Park Authority hit an unexpected snag when, despite the huge efforts they had made to woo local communities, Buchanan Community Council and a number of local residents objected to the old east Loch Lomond byelaws being revoked. I understand that in the ensuing panic – after all the LLTNPA keeps claiming the byelaws are all about meeting the “needs” of local communities – the matter went all the way up to the Cabinet Secretary for the Environment. Hence why the signs for the 2011 byelaws, which should have been revoked before the new ones

came into place, are still up. Another shambles.

I expect that this will be addressed at the Board meeting due to take place on Monday 13th March at 2pm – there are still some decisions the LLTNPA has to be seen to make in public. I also expect that the papers for that meeting which are due to be published this week – the LLTNPA changed its rules so it no longer has to publish papers a week in advance, only three days – will contain a recommendation to that effect. It will be interesting to see if there is any debate with the change in Convener from Linda McKay to James Stuart.

While I don't know the thinking behind the Buchanan Community Council rejection of the new byelaws, one reason might be that the new byelaws make it an offence to erect any form of shelter in a garden within the management zone unless you are the landowner, tenant or connected person. This could not happen under the east Loch Lomond byelaws because the curtilage of houses, which includes gardens, and what were known as "privacy zones", were excluded:

Exemptions

(12) These byelaws shall not apply to:

- (a) areas within the Restricted Zone which are designated by the Authority as a formal or informal camping site (as such camping sites are designated from time-to-time by the Authority);*
- (b) areas within the curtilage of any premises; or*
- (c) any privacy zone.*

Under the new byelaws, the exemption for gardens and privacy zones (which broadly could be taken as meaning the area close to houses where people are advertised not to camp without asking first under the Scottish Outdoor Access Code) have been removed and replaced by an exemption which relates to the landowner, tenant or "connected" person:

(12) These byelaws shall not apply to any: landowner; tenant; or connected person authorised by the relevant landowner or tenant using land within a Management Zone owned or leased by such landowner or tenant for any of the activities listed in these byelaws.

This has draconian consequences for people putting up shelters in gardens and wider implications for property rights.

Landowners can still put up a tent or indeed any other form of shelter in their garden or elsewhere in their property for their own use, i.e just for themselves. The problem is the only people that can lawfully stay in such a tent or shelter are tenants and “connected persons”, who are defined in the byelaws as very close relatives:

(a) “connected person” means (i) in the case of a landowner or a tenant who is an individual, the landowner’s or the tenant’s parents, spouse or children; and (ii) in the case of a landowner or a tenant which is a body corporate or unincorporated body, any individual who has the power to control the affairs of that body, by whatever means;

What this means is if the landowner is away and their partner – whose name is not on the title deeds – or children decide to put up a tent in what would normally be regarded as their own garden but have forgotten to ask the “head of the household” to authorise this, they are committing a criminal offence. Remember, this is not just about tents, its any shelter, so in these circumstances erecting a children’s pop-up shelter in a garden would be a criminal offence.

What’s even worse, not even the landowner is empowered to ask round their neighbour’s children to spend a night with their own children in a tent in their own garden. This is not only draconian, but almost certainly a fundamental breach of the human right to be able to enjoy your own property (which is quite compatible with access rights which allows other people to enjoy land outside the curtilage of buildings).

There are further significant implications for human rights – and common sense – from the way tenants, who have similar rights to landowners under the byelaws, have been defined as meaning someone who has leased land for a year or more:

(i) “tenant” means the tenant of any land within a Management Zone leased or let to such tenant under a lease of one year or more;

I think the reason for this definition was to prevent landowners – not all of whom were against the byelaws – from granting fishermen a temporary lease to occupy an area of land as part of their fishing permit. In other words, the LLTNPA Board has been so against camping that it did not even want camping to continue under the supervision of landowners – which actually would have offered a solution to the problems associated with irresponsible fishermen without any need to bring in byelaws.

The consequences though are again draconian. Rent a holiday property – perhaps one of the chalets

being put up by Sandy Fraser, a strong supporter of the byelaws, in Balmaha – and allow your child to put up a pop up tent outside while playing and you have committed a criminal offence. What sort of society does the LLTNPA want to create? The LLTNPA will protest of course that this is not what they intended, but its the LLTNPA and the Scottish Government which have drafted the byelaws. They are responsible for this authoritarian measure which affects far more than access rights.

Its not difficult to think of other scenarios which are equally disturbing. Imagine a soaked and bedraggled walker coming by your house, you cannot now even play the good samaritan and say “just pitch your tent by my house” without making them liable to criminal prosecution. There is something morally repugnant about the LLTNPA’s whole way of thinking – in fact as I have said before, in the desperation to ban camping, they have lost their moral compass.

Its worth adding that the change of wording in the byelaws, so that the exemptions now apply to landowners, tenants and connected persons rather than the curtilage of property also impacts on other activities covered by the byelaws. So, for example, a landowner invites friends to stay on their property in a campervan – it would be an offence for those people to sleep in the campervan outside the house unless the campervan is parked on the drive to the house and this counts as a “private” road (as all roads are exempt from the byelaws).

The LLTNPA has promised it will produce an enforcement policy – it will be interesting to see whether this is among the Board Papers for the meeting next week and how it proposes to deal with scenarios like the ones outlined above. In my view, and I am sure most lawyers would agree with this, you cannot have a criminal law whose application fundamentally depends on discretion. The problem for the LLTNPA is if their enforcement policy states that the byelaws shouldn’t be applied to tents in private gardens and their rangers should just simply ignore breaches such as this, they will be undermining their own law and I think open to legal challenge.

What the changes to the wording of the camping byelaws illustrate is this is a National Park Authority which is out of control and no regard for anyone’s rights, whether recreationists or occupiers of property. Buchanan Community Council were right to object and the implications of the byelaws for local people and visitors needs much more publicity.

Category

1. Loch Lomond and Trossachs

Tags

1. access rights
2. Camping bye laws
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