

The enforcement of the camping byelaws

Description

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Ranger Service

- No.1 priority = byelaws
- Checking permit areas, and byelaws across the 4 zones
- Flexible deployment & patrol
- Intelligence led patrolling – v communities / volunteers/ pa

Slide presented to Stakeholder Forum November 2016 – the clear priority for the Park is to enforce

Back in November I submitted an FOI request to the Loch Lomond and Trossachs National Park Authority intended to enforce the proposed camping byelaws:

– all information relating to any intention to prosecute whether internal, discussions or communications with the police, procurator fiscal, Forestry commissioner anyone else who might be involved in enforcing the byelaws.

The Park refused my request ([see here](#)), stating that it was too general but committed to producing an enforcement policy and, on 24th March, I received an email to say that it had been published ([see here](#)).

What is the status of the Enforcement Policy?

The first thing to note about the Enforcement Policy is that it has not been considered or approved by any public meeting of the LLTNPA Board. In my view it's the National Park Board that should decide policy, not staff – though it's possible the Enforcement Policy was considered at a secret Board Briefing session earlier this year. This contrasts with the LLTNPA's litter enforcement policy – which is referred to in this new policy – which was considered at a Board Meeting, in June 2016. However, even in that case Board Members were only asked to NOTE the contents of the policy, not to APPROVE it:

DECISION: Members agreed to:

- a) Note the current arrangements for litter management
- b) Note the current Park Authority responsibilities
- c) Note the updated RESPECT Your Park message forms a key part of approaches to reducing litter
- d) Note the approach that the Park Authority will use its powers under the Environmental Protection Act 1990
- e) Note contents of the Fixed Penalty Notice (FPN) Scheme of Officer Delegation Appendix 2.
- f) Approve the FPN Scheme of Officer Delegation Appendix 2.

This is yet another governance failure. Can anyone in the LLTNPA explain why, when the Board was asked to endorse the approach to signage about the byelaws in December 2016, they have not been asked to endorse or approve the enforcement policy? It appears the main decision-making power left with the Board now is to approve financial expenditure and formal plans, all other decisions are left to staff. This is wrong and way below the governance standards of local authorities.

So what does the Enforcement Policy tell us?

I had hoped the Enforcement Policy would say how the LLTNPA proposes to deal with certain situations which I believe make the byelaws all but unenforceable:

- the thousands of visitors who will camp, light fires, put up shelters, try to sleep overnight in their campervans off a road who are completely unaware that they are committing a criminal offence
- local residents, apart from the landowners and immediate family who are exempt from the provision, who put up tents and bivouacs in gardens within the management zones or occupy a form of shelter overnight
- people who know they are contravening the byelaws but do so for safety reasons (eg cycle and canoe tourers who stop because of exhaustion or bad weather)

- and, on the definitions front, what activities relating to lighting of fires are seen by the LLTNPA as likely to cause damage?

The Enforcement Policy does not answer any of these questions. Perhaps the answers are contained in the procedures referred to at the end of the policy (which I have now requested under FOI):

6. Related Policies and procedures

6.1 This policy should be read in conjunction with the following procedures:

- Loch Lomond & The Trossachs National Park Byelaws 2017 Enforcement procedures
- Fixed Penalty Notice Policy and Procedure
- Lone and Remote Working - Operational Procedures
- Risk Assessment Policy and Procedure
- Dress Code and Personal Appearance Policy
- Vehicle Use Policy
- Your Safe Driving Policy
- Unacceptable Behaviour Policy
- Procedure for Managing Unacceptable Behaviour
- Complaints Handling Procedure
- Data Protection Policy

What the enforcement policy shows is the LLTNPA is sitting astride two horses which are about to gallop off in opposite directions. The dilemma for the LLTNPA is they would really like everyone to just accept the byelaws, and not to have to refer anyone to the Procurator Fiscal, but at the same time as soon as it becomes known the Park is not enforcing the byelaws people will simply ignore them. For this reason, while the Enforcement Policy says a number of sensible things about the need to engage visitors, it also states:

the Park Authority will always reserve the right to proceed straight to legal sanction should the Park Authority consider that, in the circumstances, this is the most appropriate course of action.

What are these circumstances? The LLTNPA refuses to say.

The dilemma for the Park is illustrated by the action taken by David Lintern and friends, which David covered in a fine piece on Walk Highland ([see here](#)) essential reading for anyone who cares about access rights. I fully support David's deliberate testing of the camping byelaws unjust laws are just that and deserve no respect and no-one breaching the byelaws who is camping according to the Scottish Outdoor Access Code should be prosecuted. So, have the LLTNPA referred David to the Procurator Fiscal? If they have, I predict a storm of protest. The risk for the Park is that a very public prosecution of someone for challenging the byelaws will show up how unjust they are, treating responsible camping without the Park's permission as a more serious offence than dropping litter or using a mobile phone when driving.

If on the other hand the LLTNPA haven't referred David to the PF, its going to be very difficult for them to take action against anyone else who deliberately breaches the byelaws in future as a precedent has been set.

As the LLTNPA Enforcement Policy says:

(ii) Consistency – The public can expect to be dealt with consistently when interacting with any member of the Park Authority in relation to enforcement activities. Consistency of approach and enforcement approach in similar circumstances to achieve similar outcomes.

While the enforcement policy highlights the need for consistency, it says nothing about how this will work, i.e in what circumstances the LLTNPA will actually refer people to the PF. Its just yet more parkspeak. So, any camper who faces prosecution, should just ask the Park what has happened in similar cases.

The explanation for this lack of clarity is I believe contained in the policy:

3.2

Overall compliance with legislation is only possible with the consent of the public. If an acceptable level of consent is obtained then every aspect of Park Authority enforcement must be exercised to the highest standards. The integrity of staff along with a consistent, transparent approach to engagement and enforcement in clear and understandable messages is essential in maintaining public confidence allowing staff to carry out their duties.

The byelaws need our implicit consent to succeed. What that means is the LLTNPA needs wild campers to know what areas are covered by the camping management zones and apply for permits in advance. If the LLTNPA was clear about when it was going to try and criminalise people, it would be easy for people to get round the byelaws. However, if people don't respect the rules the Park is trying to create and don't give their consent to them, if people simply turn up and camp responsibly (whether inside or outside a management zone or permit area) what is the Park going to do? Their enforcement policy can't tell us but I am not sure there is that much they can do anyway.

A primary reason is most people won't know about the byelaws. The LLTNPA could put up more signs, spelling out what activities are banned, and then prosecute people who ignore these signs. This may yet happen - there are indications that a second phase of signage is planned to add to that approved by the Board.

Camping brand

The 'suite' together

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LOCH
LOMOND
& THE TROSSACHS
NATIONAL PARK



National Park Authority Briefing
Your Park 19th September 2018

Sign from Secret Board Briefing session 19th September 2016. The no camping sign on right was no

The LLTNPA has however already spent Â£100k on signs that tell the public very little and the cost of installing a no camping sign in every possible camping place along the loch shores is likely to be prohibitive.

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Budget

Overall signage budget £100,000

Threshold signs:

- Cost £5-10K each
- 12-14 signs needed

Permit area signs:

- Cost less than £500 each
- There are 30 permit areas, they v
sign each.

Slide from secret Board Meeting September 2016.

The 'Threshold' signs are those at the entrance to the management zones. No wonder staff were not keen when Board Members suggested there should be signs telling people that they were leaving the camping management zone that might have cost another Â£60k. It appears that if the Park was to install small 'no camping' signs it would cost Â£500 apiece there must be at least 200 good places to camp outwith the camping permit areas so that's another Â£100k. Not good use of public money, but without signs it will be almost impossible to enforce the byelaws because most people won't know and if referred to the PF can use this as a defence. It won't look good if a visitor stopping off to camp overnight in a car is prosecuted in fact I suspect the PF will regard this as a waste of Court time. The LLTNPA has ducked this issue, in fact its head is in the sand, about how it can ensure everyone stopping off knows about the camping byelaws.

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National Park Authority Briefing
Your Park 19th September

No camping sign mock-up presented to Secret Board Meeting September 2016. This glossy mock-

The problems are illustrated by the proposed no camping signage which was never put to the public Board Meeting in October. Imagine approaching this layby with a campervan. The sign says nothing about sleeping overnight in campervans being a potential breach of the byelaws. Its hard though to see how any sign could accurately convey the legal position. Legally, roads are exempt from the provisions of the byelaws and the legal definition of a road includes its verge. So, if you pull off this road onto the flat verge between the two signs, or behind the one on the left, thatâ??s quite legal. However, if you could drive the campervan down towards the loch shore, as soon as you left the verge if you slept in that position overnight that would be an offence. The LLTNPA is never going to be able to convey that message by signage and the byelaws are as a consequence unenforceable for campervans. Interestingly the enforcement policy says NOTHING about the different enforcement approaches Rangers might take depending on whether someone is camping, in a campervan or has put up a tent in the garden of a house they are renting.

The enforcement policy describes two general approaches to people breaching the byelaws, which it describes as the Preventative Approach and the Escalated Approach. The first is mainly about informing people:

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4.5 The Preventative Approach

4.5.1 Key parts of the preventative approach are: clear and consistent messages; improvements to countryside signage; messaging on personal responsibility and responsible behaviour on the environment and other issues; and a focus on contravening the byelaws and the different types of contravention.

4.5.2 The Park Authority will employ the use of signage to make information available in such a way that visitors can appreciate the special nature of the National Park and minimise their potential impact. Provided the public will hopefully be less likely to contravene the legislation within the National Park.

What's interesting about this is that the Park classes the effect of negative behaviour on the environment as being the same as contravening the byelaws. In fact the byelaws do almost nothing to tackle "negative behaviour" that is a myth put out by the LLTNPA as this is already fully covered by other laws. All the byelaws do is ban people who are camping responsibly. The Park however wants to try and persuade responsible campers that by the very act of camping they are being irresponsible. This won't work. It requires people to abandon all their critical faculties and specifically to accept that the LLTNPA is a better judge of where to camp than you are. All the evidence shows the Park is totally incompetent to manage camping and nothing they say should be trusted ([see here](#)) or ([here](#)).

The second approach will be taken to people who breach the byelaws, whether inadvertently or deliberately:

4.6 The Escalated Approach

- 4.6.1 When byelaws and / or legislation that Park Authority to enforce is allegedly contravened, action to be taken. The primary goal is to prevent repetition of the contravention.
- 4.6.2 Park Authority staff empowered and trained to deal with contraventions of byelaws and / or legislation through direct face-to-face contact in order to achieve resolution by helping people become more aware of the provision of information and advice.
- 4.6.3 During face to face encounters, when verbal reasoning to remedy the situation have failed, and in the event of an alleged offence then the appropriate enforcement action to be adopted.

The important words here is that the Park is in these cases going to try and stop people doing what they were doing. So, if you inadvertently camp in a management zone, the Park Rangers are going first of all to ask you to leave – what they call a voluntary resolution of the breach. It appears therefore that as long as a camper is generally co-operative with Rangers, in other words agrees to move their tent or apply for a permit, there is little chance of them being referred by the Park for prosecution.

However, the enforcement policy does not cover what happens in specific circumstances, such as:

- the camper is exhausted or ill or otherwise in a position which makes it unsafe to move
- what happens if this is a repeat breach of the byelaws, in other words the person camped previously, agreed to move on, but has returned to camp on another occasion

The second point is crucial. Under the byelaws the LLTNPA has the right to take the name and address of people breaching the byelaws. It has not said what it will do with this information (this is something else which should have been decided by the Board), how long it will store it or whether it will record other information such as whether the camper has been informed about the nature and extent of the camping byelaws and the implications of breaking them again). One way to find out if you provide this information is to submit a Subject Access Request under Data Protection legislation to find out what information is being held about you.

(to be continued)

Category

1. Loch Lomond and Trossachs

Tags

1. camping
2. Camping bye laws
3. Governance
4. LLTNPA
5. natural environment
6. secrecy

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