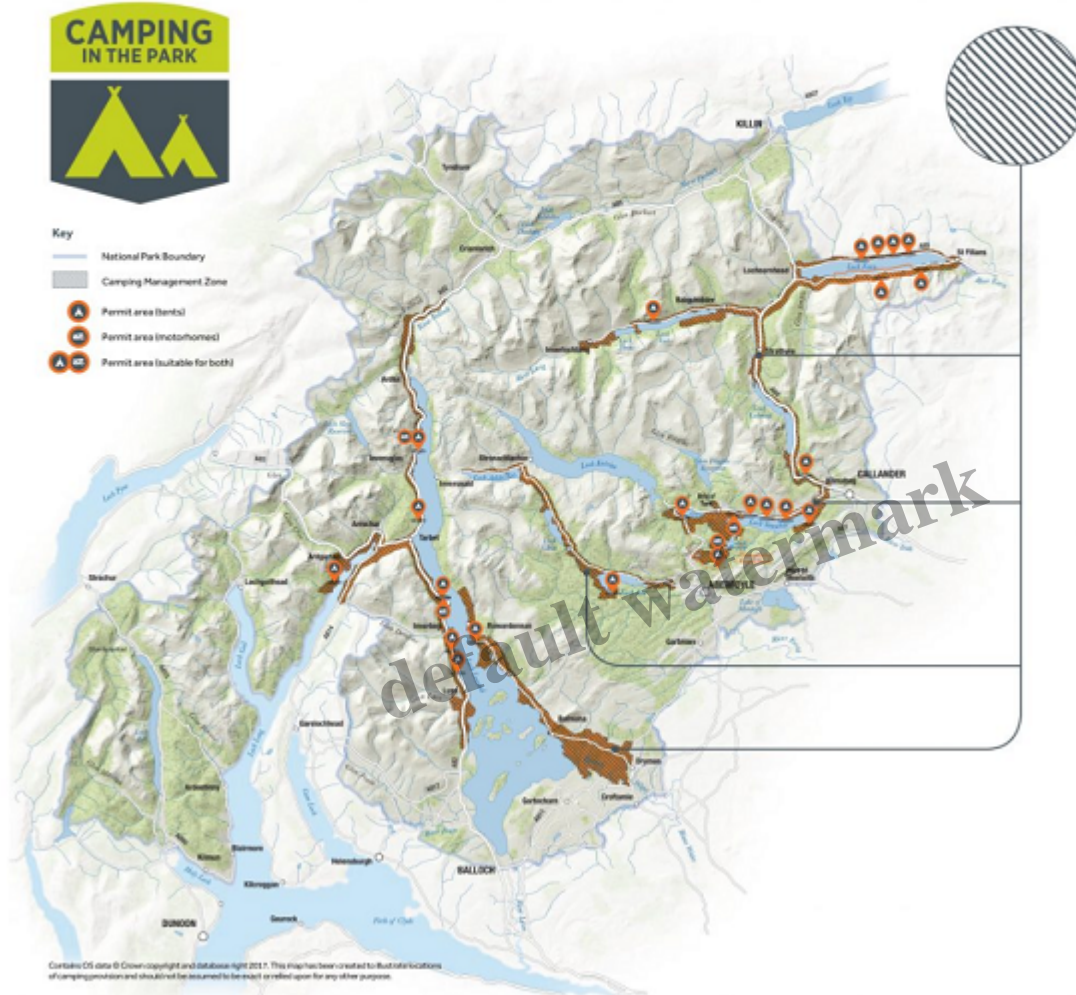


2. What do the camping byelaws cover?

Where you can camp in a tent and stop overnight with a motorhome or campervan along some lochshores in the National Park, from 1st March to 30th September. If you camp outside of these areas you will not be affected by the byelaws. The byelaws cover less than 4% of Loch Lomond & The Trossachs National Park.

ct again today



[The original section

of this post that dealt with the enforcement of byelaws against campervans contained faulty information, based on that originally supplied by the LLTNPA, and has been corrected ([see here](#)).

The Loch Lomond and Trossachs National Park Authority's camping byelaws come back into effect today within the four camping management zones in the National Park. Unlike in 2017, the first year of the camping byelaws, there has been no fanfare. There is nothing on the Park's website today to announce the new "season" as they like to call it, perhaps because the Park has at long last realised there is no point. Few people ever camped on the lochshores at this time of year, apart from serious

anglers, and it would be a complete waste of resources policing them though this is what the LLTNPA did in 2017 ([see here](#)). I expect the Park will step up educational and enforcement activity later in the Spring. There are, however, a number of serious legal issues which the LLTNPA should have addressed before the new “season” commenced. This post takes a look at them.

The LLTNPA’s byelaw warning system and the civil liberties cover-up

Following my post on how the Park quietly dropped its unlawful warning system earlier this year ([see here](#)), I emailed Board Convener James Stuart pointing out that the draft Update Report to Scottish Ministers, which was included in the papers for the December LLTNPA Board Meeting, made no mention of this ([see here](#)). I asked that the unlawful way the byelaws had been applied prior to the change and the civil liberties implications be discussed at the Board meeting.

He replied on 6th December as follows:

Dear Nick,
Thank you for your email and for raising the points you have and also for the regarding your note of the 29th (which I did see). I can confirm that I have n topics you raise in the email of the 29th and the email below.
I hope you will appreciate that I will explore these issues at the most approp in the organisation and in the manner I believe to be most suitable.

Yours aye,
James
J A STUART
Convener

James Stuart then failed to say anything about the civil liberties issues I had raised with him at the Board Meeting. It appears he does not believe its appropriate that the Board should consider, or that Scottish Ministers should be informed of, the fact the Park had no legal authority to issue “warnings” (only to collect names) and was holding information on people issued warnings for five years. That is two years longer than the Police are allowed to do. I suspect his Board Members are still unaware of all this. I regret to say that the continued failures in governance at the LLTNPA stem from the top.

With the new byelaw “season” commencing James Stuart needs to explain to his Board and to Scottish Ministers exactly what the new system is, that it complies with the law and what the LLTNPA is doing to rectify its past unlawful actions. At the very least the LLTNPA now needs to write to ALL people who were issued warnings apologising for the Park’s mistake, informing them that the data the LLTNPA holds on them has been changed and also that no personal information will be kept longer than three years.

Campervans and the byelaws

For the second year running the LLTNPA failed to explain in their report to Scottish Ministers how the camping byelaws are being applied to campervans in the camping management zones given the legal rights that people have to stop off overnight in a vehicle ([see here for explanation of issues](#)). The Update Report provided was no explanation given of WHY the LLTNPA is still portraying the camping

management zones and permit areas as applying to campervans – see screenshot at top – when legally they cannot prevent people staying overnight in campervans by any road within the area. None of this was raised at the Board Meeting and, once again, Board Members appear to have been deliberately kept in the dark.

Part of the explanation is that if the LLTNPA told Scottish Ministers that the byelaws could not be applied to campervans, as originally intended, then the Park would not just lose face, the campervan permit areas would become irrelevant. The LLTNPA are keen to avoid this because campervan permit areas make up a significant proportion of the 300 “camping places” the Park promised to Scottish Ministers and claims to have delivered. 10 out of the 44 permit areas are for campervans. What’s more, 22% of all permit bookings were for campervans. This swells the figures for those recorded as “camping” in the Park – disguising the large drop in people actually camping – and provides a small but valuable source of income to fund the war against campers.

While there is nothing to stop the LLTNPA and Forestry Commission Scotland trying to charge for campervans to stay off road on their own land, doing this under the framework of the byelaws creates legal issues which have still not been addressed. Under the byelaws a campervan can stop off overnight on any road, including its verges, over which there is a right of passage. 2 years ago the LLTNPA confirmed they held no information on such roads – in other words they did not know where campervans could stop off under the byelaws. In some areas, such as Forest Drive where many of the campervan permit areas are located, its fairly clear there is no right of passage because the gates there are locked each night.



Old road at Inveruglas – the campervan permit bays are on right side of photo. Credit Google Street view

However, in others such as Inveruglas, where the campervan permit places are off what is in effect a layby (rather than in the main car park) its a different matter. I very much doubt that rights of passage have been extinguished here. If someone, therefore, refused to pay for a permit here its unclear what the Park could do legally to enforce their permit system and charges. The LLTNPA Board should

have discussed this, been provided with legal advice about their right to charge campervans under the framework of the byelaws and ensured their staff were issued with clear advice what to do in such circumstances. That has never happened.

Its doubly important that that debate and scrutiny takes place because, while the Report to Ministers makes no reference to continued enforcement of the byelaws against campervanners, it turns out the LLTNPA is still doing so by taking names of campervanners (see table below and subsequent post [here](#)).

Byelaw 7 is the one that applies to campervans and motorhomes:

- (7) It shall be an offence for any person to sleep overnight **Management Zone** unless:
- (a) they have been authorised to do so by the Aut
 - (b) the vehicle is on a road.

My suspicion is that something else is going on. It would be very interesting to know the locations of the campervanners whose names were taken. If they are on private land away from any road, then legally the Park would be quite entitled to take action under the byelaws. If that is the case why not put out a clear message about this? This would state that the LLTNPA accepts campervanners have a legal right to stop off by the road but those doing so should be aware if they stay overnight right off the road network they would still be committing an offence under the byelaws. However, if the alleged offences took place in campervan permit areas, that would suggest something rather different, that the LLTNPA wants to keep the byelaws in place for campervans as a means of enforcing the permit system it has set up. For without the byelaws, if someone refuses to pay for staying at Firkin Point say, all the LLTNPA can do is try and initiate a civil action to recover the money.

So just why has the LLTNPA failed to explain to its Board or Scottish Ministers what is really going on?

Wider enforcement issues

The Update Report to Ministers said very little about enforcement:

“Of the 25,000 people who camped this season [the figure is not correct and only concerns people recorded as doing so], National Park Rangers took the personal details of 931 individuals in relation to a contravention of byelaws [last years these were described as warnings]. A total of 12 cases (where the people refused to comply with the byelaws) were reported to the Crown Office, four by the National Park Authority and eight were reported by Police Scotland.”

My information request ([see here](#)) elicited some further details about people whose details were taken (now described as “advice” rather than a “warning”!):

“No of cases where advice given on section of camping management byelaws

Byelaw	No breaches	Short description of offence (added by author)
Byelaw 6a	686	putting up tent, wigwam or bivouac at any time
Byelaw 6b	260	Putting up or occupying any form of shelter save umbrella overnight
Byelaw 7	6	sleep overnight in a vehicle off a road
Byelaw 8A	12	fire that likely to cause damage
Byelaw 8B	47	collecting wood that likely to cause damage
Byelaw 9	7	refusal to provide personal details
Byelaw 13	5	refusing to leave a camping management zone

The data is incomplete. The Park claims to hold no details of the numbers of warnings issued by Police Scotland or other partners, though the Report to Ministers states that Police Scotland made 8 referrals to the Procurator Fiscal. Its unclear whether the police in addition to this issued any warnings, under their official warning system, or whether they have taken any other personal details. Scottish Minsters and the Board therefore were not fully informed about the level of enforcement activity which took place last year. That is essential to allow critical scrutiny.

In the FOI response the LLTNPA states that it holds no information about whether the 931 people whose details were taken were camping outside a permit area or were within a permit area but had failed to buy a permit. That is pretty basic information without which I cannot see how the LLTNPA can ever evaluate how effectively the byelaws are being enforced.

There are also some reasons to question the accuracy of the data, for example there is no reference to byelaw 14 in this data though the Information Response and a further clarification ([see here](#)) show was used at least once.

Unlawful signs

The LLTNPA’s report to Ministers also failed to say how much it has been spending on signs, some of which in my view are unlawful.



Parkswatch has already commented on the repeater No Camping signs which the LLTNPA has been erecting all over the camping management zones in places where people still try to camp. The problem is the small print is just that, too small to read. Unless you get very close to the sign you would never realise the ban only applied March to September. The effect therefore is to deter people from exercising their legal right to camp between October and March. Under the Land Reform Act:

The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—

(a) put up any sign or notice;

These signs therefore appear unlawful. The solution, which the LLTNPA needs to put into effect, is to

cover up all these signs for four months of the year.



The legal quagmire the LLTNPA has created for itself is also illustrated at Firkin Point. Again, anyone reading this sign would think that it applies all year round. If one accepts this is private land and there is no right of passage, there is nothing to stop the LLTNPA trying to charge people for staying here all

year round. HOWEVER they cannot do that under the camping byelaw system which only applies for 8 months of the year. The LLTNPA either need to set up a separate system for charging for campervans which is completely outwith the byelaws or remove signs like this for the months they don't apply.

Legal liability of the LLTNPA under the permit system

At the start of the camping byelaws the LLTNPA refused to accept it might have any liability under the camping permit system, for example where it sold permits to people who then found the areas concerned uncampable (e.g because they were underwater). Then, last year the LLTNPA made a reference to refunding people the cost of permits so, after Storm Frank and the end of the byelaws season I submitted an FOI about the number of refunds made and the reasons for this.

The response ([see here](#)) and appendix ([see here](#)) makes interesting reading:

“A total of 89 refunds were made during camping season 2018, including the 14 refunds for bookings on the nights of 18th and 19th September due to adverse weather conditions [storm Frank]..... Cases where a refund request was made but not granted have not been recorded. Accordingly we have to advise under Regulation 10(4)(a) of the EIRs that this information is not held.”

The reasons for the refunds, vary from illness to fire wood that was purchased not being available but they, show that all is not well with the operation of the byelaws:

Firkin Point B Poor experience, customer refunded as goodwill gesture

3 Lochs Forest Drive Drive Human faeces on site – no suitable campground

Loch Lubnaig Campers would have arrived after closure of campsite, therefore cancelled and refunded

Firkin Point (m/home) Customer complaint – goodwill gesture

3 Loch Forest Drive Permit area unsuitable for camping

Balquidder Glen Permit area close – high loch level

The 89 is, I believe, the tip of an iceberg. Not that many people would complain or ask a refund for a £3 permit. As more people become aware that it is possible to claim, I suspect the number and administrative costs of processing these will increase substantially. The legal implications are, however, much wider than the number of permits it has had to refund to date or will do in the future. How long until someone injures themselves in a permit area and sues the Park for damages? Given the terrible state of some of the permit areas, I suspect it will not be that long until this happens. Its no wonder too that private landowners are not co-operating with the provision of permit areas. What landowner would wish to open themselves up to potential claims?

Contrast the permit system the LLTNPA has created with access rights where you basically go at your own risk. When you sell something, you create legal liabilities. It may well be the permit system and the liabilities it creates which ultimately leads to the collapse of the camping bye-laws.

Again, I note that neither the LLTNPA Board nor Scottish Ministers have been made aware of the issues.

The LLTNPA Board, Scottish Ministers and the camping byelaws

This post has focussed on legal issues associated with the implementation of the camping byelaws

One positive aspect of the Loch Lomond and Trossachs National Park Authority Board Meeting on 10th December is that it allocated 1.5 hours for consideration of the Update Report for Scottish Ministers on the camping byelaws. The presentation by Simon Jones, the Park's Director of Conservation was short and allowed plenty of time for questions and discussion which filled the allocated time slot. A step forward from the meeting which approved the camping byelaws where discussion was over in well under an hour because the Board had already made the decision in secret. The newer Board Members asked some good questions but failed to address any of the fundamental issues, such as the legal questions covered in this post.

Part of the reason for that was the information presented to them was highly selective and packaged. Contrast the incredibly high levels of positive feedback reported by staff with the reality of why people were refunded money for permits they had bought.

Unfortunately, another reason for the lack of debate is that none of the Board Members had sufficient knowledge of access rights or of what is happening on the ground to challenge the contents of the report and the narrative from senior staff.

The entire outdoor recreation community now needs to demand that the Board, and failing them the Minister, takes a proper look at how the byelaws are really operating. This should start with the legal ones relating to civil liberties, the applicability of the byelaws to campervans, how the byelaws are being enforced, the legality of the signage that has been put in place and the legal liabilities the LLTNPA faces going forward. If the Board don't have the skills to do so, they should ask in people who do – the National Access Forum might be a good place to start.

Category

1. Loch Lomond and Trossachs

Tags

1. access rights
2. camping
3. Camping bye laws
4. Freedom of Information
5. Governance

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nickkempe

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