

The corona crisis – the panic and the removal of fundamental human rights

Description

Ten days ago I, like many others, was prepared to accept that tough measures were needed for a temporary period in order to suppress the COVID 19 to manageable levels. I was concerned, however, that public health was not being given the resources necessary until a vaccine is developed (likely to be another 12 months) and that irrational restrictions were being put in place to limit walking in the countryside ([see here](#)). I have never had so many direct emails as a result of a post, with people agreeing but not feeling able to comment publicly – I appreciated them all.

At that stage I had not read the *“The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020”*. My view is these are truly draconian (see below). I had hoped this was a bit of an error, the result of rapid drafting in the crisis, but now the Chief Medical Officer, Catherine Calderwood, is telling the media that even more stringent restrictions on movement will be required if the number of deaths don't fall ([see here](#)). This post explains why that would be an attack on fundamental human rights, is not justified and will do far more harm than it will prevent.

In the panic some people are arguing anything is justified to save just one life when 529,532 deaths were recorded in England alone for 2018 or c1400 a day. I also therefore explain why the risks to health and to the NHS of people being outdoors is negligible, as long as social distancing is observed, while by contrast the health risks of confining people to their houses will be enormous.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

The Regulations for Scotland ([see here](#)) are almost exactly the same as for England ([see here](#)), albeit structured slightly differently. The Scottish Government has adopted in law measures that appear to have been designed for London, where there is very little space, rather than Scotland where there is lots. There was no scrutiny of the regulations in either parliament. Indeed in England the Regulations

came into force BEFORE they were even laid before Parliament (which is in any case suspended):

Regulations made by the Secretary of State, laid before Parliament under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2020 No. 350

PUBLIC HEALTH, ENGLAND

The Health Protection (Coronavirus, Restrictions) (England)
Regulations 2020

Made - - - - at 1.00 p.m. on 26th March 2020

Laid before Parliament at 2.30 p.m. on 26th March 2020

Coming into force - - at 1.00 p.m. on 26th March 2020

The Regulations affect far more than access rights, or the role our National Parks could be playing during the corona crisis, they have removed a number of OUR fundamental rights and civil liberties. Most important is the restriction that now makes it a criminal offence to leave the place you are living unless you have a defence/reasonable excuse:

“(1) Except to the extent that a defence would be available under regulation 8(4), during the emergency period, no person may leave the place where they are living.”

The Scottish Government has, like England, specified a list of reasonable excuses ([see here](#)) but the wording of the Scottish Statutory Instrument is, if anything, more draconian. In England the Regulation says “no person may leave the place they are living without a reasonable excuse” whereas in Scotland the Regulation states that you commit an offence by leaving your house, but there is a defence to that..... In effect, what the regulations in Scotland say is that everyone leaving their house is assumed to be breaking the law unless they can show otherwise. That seems to me to overturn a fundamental principle of good law in any country, that you are innocent until proved guilty. The introduction of Fixed Penalty Notices for people who cannot provide a reasonable excuse for leaving their home, escalating to a maximum of £960 for repeat offences, makes it very hard for anyone to challenge the application of this draconian law in the courts.

While the list of “reasonable excuses” is not exhaustive, it is by implication very restrictive. For example, there are only three reasonable excuses for visiting someone who is not in your household outside of work: to enable separated couples to see their children; to care for a vulnerable person; or to attend a funeral. Taken with the provision that it’s an offence for more than two people to meet in a public space, effectively this means that even if you have family living nearby who have a private garden with plenty of space for social distancing, it is now a criminal offence for you to leave your house to meet them there. Even for a five minute chat. This is senseless and cruel. I remember when our media used to criticise the so-called communist countries for putting dissidents under house arrest for just a few weeks. Well the whole population of Scotland is now being treated in not dissimilar

fashion. Thank goodness for Lord Sumption, who has rightly slammed this attempt to imprison people in their houses ([see here](#)) and attacked the Derbyshire Police for trying to stop people from going for a walk in the Peak District National Park ([see here](#)).

Unfortunately, for anyone thinking we are more sensible in Scotland, Police Scotland has followed Derbyshire's example and closed the car parks in Strathclyde Park ([see here](#)). All that that has done is limit the space available to people to walk, forcing people into ever more confined spaces as they are told not to travel anywhere. This then will be used by the UK and Scottish Governments as just the excuse they need to introduce even more draconian restrictions. Mad! A question Police Scotland should be forced to answer is why, if the number of the people was really such a problem, did they continue to allow cars to enter the Park?

As another example of how draconian the law is, imagine two doctors living alone who work in a hospital and who, like many NHS staff exposed to the virus, are found to have it once tested. After a period in isolation alone at home, they return to work. At the end of the first shift back, working together on a COVID ward, with people dying around them, the current regulations make it illegal for them to meet up in each other's home for a glass of wine or mutual support after work. Having had the virus, the likelihood of them getting it again immediately appears very low (even if one of the scientific unknowns at present is how immunity against Covid 19 might last). They would also not be risking anyone else, yet the regulations mean it would still be an offence for them to meet. Senseless!

Humans are social animals, we need each other's support, and it should be completely unacceptable that the Regulations remove rights of people to do have social contact in ways that are safe and observe social distancing rules..

The Coronavirus Restriction Regulations. exercise and Outdoor Recreation

Apart from shopping, for many people the only other reasonable excuse against being charged for leaving your home is "*to take exercise, either alone or with other members of their household*". This does NOT at present legally limit a person to taking exercise just once a day or for a limited period of time. However, such a limit is now being promulgated by the UK and Scottish Governments ([see here](#)) . That would be a disaster in Scotland and most of the rest of the UK and goes against the advice of many public health experts:

"Confinement, sometimes in overcrowded accommodation with little or no private green space, and particularly during times of anxiety has health risks.

Physical activity reduces the risk of cardiovascular diseases, several cancers, dementia, and diabetes. These conditions affect millions of people; and some increase the risk of a serious outcome if one contracts Covid-19. Walking and cycling, particularly in greenspace, is good for mental as well as physical health. People should be encouraged to exercise at home, but for most of us it is unlikely that this will replace the walking and cycling we do outdoors.

Social distancing will make many sports and gym based exercise impossible. However, walking and cycling can be compatible with social distancing, if people are responsible. Transmission risks will be very low if people stay 2-3 metres apart."

[\(see here for full letter to Government\)](#)

Most people don't get their exercise in one go. As an example, in normal circumstances, children might skip on the way to school, take a scooter on the way back, play.....etc. You don't need to believe me on this, its explained quite clearly in the Guidance on Physical Activity issued in September last year by guess who? The four home nations Chief Medical Officers, no less ([see here](#)):

Toddlers (1-2 years):

- Toddlers should spend at least 180 minutes (3 hours) per day in physical activities at any intensity, including active and outdoor play; more is better.

Pre-schoolers (3-4 years):

- Pre-schoolers should spend at least 180 minutes (3 hours) per day in physical activities spread throughout the day, including active and outdoor play; more is better; the 180 minutes should include at least 60 minutes of moderate to vigorous intensity physical activity.

And here is what they recommend for all other children and young people:

Children and Young People (5 to 18 years)

- Children and young people should engage in moderate activity for an average of at least 60 minutes per day and include all forms of activity such as physical education activities, play and sports.
- Children and young people should engage in a variety of physical activity across the week to develop movement and bone strength.
- Children and young people should aim to minimise their sedentary time, and when physically possible should break it up with at least light physical activity.

The message is children should undertake lots of physical activity and in doses. Its clearly impossible to do this if you live in a small flat without access to a garden. Now I can understand there is a real problem in London, where its very hard to even walk down the street without bumping into someone, but there is no reason to apply guidance designed in and for London to Scotland or the rest of the UK.

Worryingly, the Coronavirus Restriction Regulations make no allowance for play or other forms of outdoor recreation (e.g. painting, picnicking, angling, sitting in the sun, getting a breath of fresh air etc). The implication is that if you don't have a garden and take your children out to play hide and seek, or you are sitting on a park bench watching the ducks, it will be up to you to prove this is a reasonable excuse for being outdoors.

This attempt to confine people to where they are living, also takes no account about people's rights to go outside for their mental well-being. All the dozens of Scottish Government policy documents about the importance of being outdoors, such as the role of greenspace for mental health and outdoor play for children, appear to have been abandoned in the panic. They have been replaced by a law that makes people who go outside for their own mental well-being criminals.

The consequences are already dire. People are frightened to go out, whether out of misinformed fear of catching Covid 19 in the outdoors, because of the criticism they will face from those misinformed

people about how they are undermining the battle against Covid 19 or fear of breaching the rules.

In the context of this clampdown, formal access rights, which could do so much to disperse people safely into the countryside for their own physical and well-being, are effectively being swept away. While ALL the activities covered by access rights (walking, cycling, horse-riding, sailing, canoeing, camping, just being outside) could be carried out while observing social distancing rules, what the regulations imply is that you can only go out for exercise. While the authoritarians and panickers are now trying to restrict this to half an hour once a day close to where you live, whether you have a park or not, at present its only camping that has been made illegal (through the provisions limiting when you can leave your home).

While camping rights are, in the circumstances, hardly the most important issue, I will use them as an example because they illustrate the stupidity of the regulations. Heading into the countryside to camp wildthreatens no-one and would be a safe way for families living in flats without access to gardens to get out safely in the school holidays (which is why I suggested two weeks ago that the Loch Lomond and Trossachs National Park Authority should have suspended the camping byelaw that force people to camp together ([see here](#)). To counter those who argue that anything is justified to help the NHS in this time of crisis, I would like to give the hypothetical example of the two doctors again. What about their needs? After putting their lives at risk to save people days, under the regulations they would be committing a criminal offence if they went out into the countryside to spend a night under the stars. That is bonkers!

Covid 19 and the panic

The Scottish Government provides very little information to the public about how the virus is transmitted – in fact NHS inform says they don't really know – but Public Health England is clear:

“The main route of transmission is from cough and sneeze droplets. These droplets fall on people in the vicinity and can be directly inhaled or picked up on the hands and transferred when someone touches their face.

How long any respiratory virus survives will depend on a number of factors; for example:

- *what surface the virus is on*
- *whether it is exposed to sunlight*
- *differences in temperature and humidity*
- *exposure to cleaning products*

Under most circumstances, the amount of infectious virus on any contaminated surfaces is likely to have decreased significantly by 24 hours, and even more so by 48 hours.”

This is quite consistent with World Health Organisation and other medical research. Hence, the recommendation for social distancing – the WHO in fact recommends at present 1 metre not 2 metres ([see here](#)) – and the importance of washing hands.

Its also worth noting that generally research on respiratory virus transmission has found that the risk of contracting the virus through temporarily moving into another person's space – e.g as happens the whole time in supermarkets at present – is also low but increases significantly as you spend more time

close to a person (15 minutes is sometimes quoted as a significant risk threshold).

The important point here is that while there are certain situations where there is a very very high risk of the virus being transmitted, e.g hospitals, social care settings, crowded cafes and public transport systems, there are other places where the risk of transmission is almost non-existent (no-one who respects science will ever say never). An obvious example is someone camping alone in the middle of the Cairngorms.

Generally, the risks of the virus being transmitted when outdoors are very limited where there is enough space for social distancing can be observed. The main exception in these circumstances is that the virus can be passed from hand to hand via hard surfaces. In the current crisis, therefore, it does make sense to close children's playparks, where many hands may touch the same piece of equipment in a short period of time, although there are questions about the role of children in transmitting the virus (as it seems to affect them so little).

Walking and cycling, however, incur almost no such risks and limiting the time or amount of exercise that people can take in Scotland therefore, is extremely unlikely to have any effect on the severity of the pandemic. London is a different case to both Scotland and the rest of England because it is so densely populated and on account of that social distancing is very problematic. In many places its impossible to walk along a pavement without bumping shoulders.

None of these facts about transmission has prevented panic stirrers claiming the contrary, with suggestions that walking in another person's space is dangerous or that touching a farm gate creates high risks. A little common sense and all these risks can be avoided.

What this means, I believe, is that the current restrictions, designed for crowded London are unjustifiable in Scotland. I am not saying there are no hotspots – the crowded Meadows in densely populated central Edinburgh is a good example – but in such places we need local public health teams, and not the police, to design the solutions to the problem. For example, rather than closing Strathclyde Park completely to cars, it would have been far better to get public health to work with parks staff and come up with a limit and a way for managing traffic.

There is a second important point about the risk of people adding to the pandemic by going outside, however, and that relates to the health impact the virus has on anyone catching it. The facts are that the direct risk to children, except those with underlying health conditions, is tiny, so tiny in fact that most don't get any symptoms. The risk to their parents is a little greater and the main risks are to older people and those with underlying health conditions like diabetes, with men more likely to die than women. ([see here for example](#)).

That's not the public perception, however, with many families and children frightened to go out. This is partly because the authorities, used panic to try and get people to observe social distancing (e.g showing younger people ill in hospital). It's also because there has rightly been publicity about health staff who have become very ill and died and they are not in a vulnerable group. There are, however, specific reasons why NHS staff become ill. While the exact reasons have not been established, it seems linked to repeated exposure to the virus, i.e to the work circumstances of health staff. That is why our governments failure to test and provide proper Personal Protective Equipment to health staff is so scandalous. But it's also why no parent should be worried about their children going into the outdoors whenever they feel like it. The risk really are very low and the risk to most children of

confining them to their houses really are very high. If they are banned from seeing their grandparents, as most children are effectively at present, there is no reason to keep them at home.

I will come back to consider the relative risks of older people staying inside as opposed to going outside in another post but would only remark that this also is a serious civil liberties issue. Last night a man in his eighties in Spain was arrested for going out for a bike ride, something that he had done for years. Cycling is now illegal because, apparently, the Spanish Government is claiming bike accidents take resources away from health. I would suggest that people are now being treated by government not as humans but as units and that is exactly why civil liberties are so important.

What needs to happen

The first thing we need to do is stop the panic and target our response to the crisis so that action is taken where it is needed (e.g protection control and effective personal protective equipment in hospitals) and not where it isn't (e.g people going out for a walk in the countryside). For this to happen everyone needs to understand better how the virus spreads, the risk it poses to different people and stop fearing the unknowns (e.g. how long immunity among those who have had Covid 19 might last). Without understanding, there can be no proportionate response to the crisis, and we will face social and economic collapse not just in our National Parks and the wider countryside but across Scotland.

The Scottish Parliament, needs to scrutinise (remotely) the Coronavirus Restriction Regulations 2020 and if, as seems inevitable the Scottish Government needs to renew some of the measures, ensure that these are fit for the purpose and proportionate. More specifically, the Scottish Parliament needs to remove from the regulations the measures that effectively confine people to their houses and ensure that all forms of outdoor recreation are legitimised.

Linked to this there is need to restrict legally people's movement by non-motorised transport in the regulations. All that is needed is that people maintain the rules on social distancing (as the vast majority have been doing).. In effect, the government should stop trying to confine people to wherever they are living and allow everyone to exercise their rights of access. This would then become the central means by which people, including all those working in the NHS, maintain their physical and mental health in these very difficult times.

Specific issues, such as potential overcrowding which threatens the social distance rules, should then be managed locally, as access rights are at present, but with public health being given a key role. Our National Parks could play a key role in demonstrating how to do this, starting now. The Loch Lomond and Trossachs National Park Authority, for example, has by far the largest Ranger Service in the country who should be providing both online and on the ground guidance to people on where to go.

In terms of people's health, in the panic, the Scottish Government has so far absolutely missed a trick when it shut schools and told non-essential workers to stay at home, even if those measures were necessary.

Since the Scottish Parliament was created, governments have been trying to persuade the population to become more physically active, for their physical and mental health, but despite the exhortations the the situation has steadily got worse in the last 20 years. As examples, the number of people walking to the bus rather than driving by car from the house has plummeted while the number of people with

diabetes continues to escalate. Suddenly, faced with the threat of a virus, the streets are full of parked cars, less polluted than they have been for years, the pubs are closed and people have nowhere to go except outdoors. This is the perfect opportunity to get people to change their lifestyles. We know the single most effective measure people can do to improve their health is go walking yet what does the government do? Pass a law and issue guidance telling people not to go out more than once a day! .

Even worse, as Drennan Watson pointed out in a comment on my last post, exercise boosts immune systems. This is exactly what people need to survive viruses (and coronavirus won't be the last, as public health experts have been saying for years).

Encouraging people to enjoy the outdoors now, could also play a key role in reviving the rural economy over the next few months. Its hard to see international travel re-starting soon, which means that people in Scotland are less likely to get abroad this summer and Scotland will see far fewer, if any, foreign visitors. With a bit of imagination, people encouraged to try outdoor recreation in the countryside now might just book a holiday in Scotland, instead of waiting for Spain to re-open. There is no reason why this should not start happening now if proper measures were put in place – the subject for another post!

Category

1. Cairngorms
2. Loch Lomond and Trossachs

Tags

1. access rights
2. camping
3. outdoor recreation
4. Scottish Government

Date Created

April 1, 2020

Author

nickkempe

default watermark