

Covid-19 and the freedom to go outdoors – dogs, humans and access rights

Description

While arguing in my last post ([see here](#)) that Scottish Natural Heritage's advice on access to farmland during the corona crisis undermines the Scottish Outdoor Access Code and is unduly restrictive, interestingly it contains a link to the quite separate Scottish Government advice on taking dogs outdoors for a walk that is far less restrictive. This post compares the UK and Scottish Government's guidance on dogwalking, contrasts the Scottish Government advice for dogwalkers to the advice being issued to everyone else about going outdoors and then considers the implications for relaxing the lockdown on access to the countryside.

UK and Scottish Government law and guidance on dog-walking

Dogs are not included in the (non-exhaustive) list of reasonable excuses for leaving where you are living during the lockdown. That's the case in the Health Protection Coronavirus Restrictions Regulation for both England and Scotland ([see here for list of reasonable excuses in Scottish Regulations](#)). Both the UK and Scottish Governments have subsequently issued guidance about when people can walk dogs and it's different.

The UK Government states in its guidance on animals ([see here](#)) states that if you don't have symptoms of COVID-19:

You may leave your house to exercise once a day and you should combine this with walking your dog. In doing so, it is important that you minimise the time spent outside of the home and remain 2 metres away from anyone outside of your household.

The Scottish Government advice for animal owners ([see here](#)) states:

Dog walking and social distancing

Advice if you do not have symptoms of coronavirus

It is accepted that dogs may need to be taken out more than once a day if you don't have access to a garden or other area for your dog to toilet.

You must:

- follow the guidance on social distancing so that you do not come within 2 metres of people not part of your household
- keep your dog on a lead if necessary to avoid coming into contact with other people or dogs
- wash your hands when you return home

Screenshot 25th April, advice issued 14th April

You will note that in the Scottish Government is very sensibly saying that if you don't have access to a garden you can take your dog out more than once a day, while the UK Government guidance says you may only go out once when taking exercise. What dog owners who live in flats are meant to do when they want a poo or a pee is not clear from the official UK government advice. That's senseless and cruel.

Since there is nothing in the UK guidance saying that it only applies to England, we have two sets of guidance applying to Scotland. The Edinburgh Evening News has, for example, given coverage of dog-walking since the beginning of the crisis which appears based on the UK/England. At the beginning of the lockdown it explained ([see here](#)) the UK guidance as follows:

This means that dog walkers will be allowed to leave their home once a day to take their dog for a walk as part of these guidelines.

Households with two or more adults will have to take it in turns to walk their dog if the dog usually gets walked more than once a day.

If you live alone and your dog normally gets walked two times or more per day, you will be required to reduce this to just once a day.

The message from the UK Guidance seems to have been if you are a dog owner living alone tough.

It may have taken three weeks, but the separate advice (extract above) issued by the Scottish Agriculture and Rural Delivery Directorate on 14th April was far more sensible. It even clarified that professional dogwalking services could continue and included helpful guidance for such businesses on how to minimise infection risks. It provides further support for my contention that most activities that take place in the outdoors pose little risk of spreading Covid-19 as long as the physical distancing rules are observed.

Advice on dogs and advice to humans

Unfortunately – or perhaps fortunately! – this has created a situation where government in Scotland has taken a different approach to dog walking during the corona crisis than access more generally.

The Agriculture and Rural Delivery Directorate has taken a very broad view of what people are allowed to do, stating it's fine to go take your dog out more than once a day if you have no garden and no Covid-19 symptoms. The Ministerial Statement on Access Rights and SNH's subsequent Guidance take the opposite approach, taking a narrow view, claiming that people should only go out once a day for a maximum of an hour and stressing that this should only be for physical exercise (the SNH Guidance explicitly states sunbathing and picnicking don't count as physical exercise). While there is no attempt in either piece of guidance to explain how they relate to what the Health Protection (Coronavirus) (Restriction) Regulations (Scotland) 2020 actually say, it is nevertheless clear that one part of government is in effect interpreting the law liberally, another restrictively.

The Scottish Government has made no attempt that I am aware of to justify these different approaches or to consider the implications for human rights.

Among the consequences are that:

- People with dogs appear to have greater permission from government to go out than people with children
- Greater acknowledgement has been given to the needs of dogs for exercise than the needs of the young and the many people with disabilities who need to take their exercise in small doses rather than just once a day.
- More account has been given to the need of people to go out with their dogs than for their own mental well-being.

Lucky the person living alone without a garden, say in a high rise flat, who has a dog and needs to go out more than once a day for their physical and mental health. Tough on family with young children in that very same block who don't have a dog.

The diametrically opposed approaches taken in the two bits of guidance also have significant consequences for law enforcement. The context for this is that the sole reasonable excuse for going outdoors that is listed in the Coronavirus Regulations relates to physical exercise and government guidance then says this should be just once a day and for not more than an hour.

For example, if a person goes to stand in a field or park to get some solace from nature and is then challenged by a police officer, there is no government advice they can point to to justify being there. If such a person argues it's for their mental well-being, then how is the Police Officer to decide if this

is a reasonable excuse or not? The very restrictive guidance on physical exercise contained in the SNH guidance and the statement from Scottish Ministers is about their only reference point.

Contrast this scenario with a person standing in the same field or park letting the dog run round them without showing any obvious signs of taking physical exercise. When challenged by the same police officer, they can point to the government guidance on dog walking. Finish!

The Scottish Government either needs to be able to justify these differences or it needs to address them. It's very hard to understand why, if someone can safely go out with their dog, they should not be allowed to go out for other reasons such as their mental well-being. Indeed, the reasons most people have dogs relates to their mental well-being, so why discriminate against people who don't have dogs?

The Scottish Government reviewed the Health Protection (Coronavirus) (Restrictions) Regulations (Scotland) 2020 after three weeks on 16th April, as they had to be law. This was just two days after they had issued their guidance for dog walkers, so they should have been fully aware of the issues. However, they did nothing. This is something that the new Committee set up by the Scottish Parliament to scrutinise the Scottish Government's response to the corona crisis needs to investigate and address.

In a final twist to this saga, before the corona crisis, arguably the largest group of people using green space in urban areas and the countryside around settlements was dog walkers. With lots more people now visiting that green space as they have nowhere else to go, there is less space for dogs and its become harder for dog owners to let their dogs run around without bumping into people. Ironically, while the UK Government's guidance in England only allows dogs out once a day, the Guidance from the Police in England (see my last [post](#)) allows people to drive somewhere for exercise. If that was applied to Scotland, and not just for physical exercise but for all forms of outdoor recreation, there would be far more space for everyone including dog walkers.

The solution lies in access rights

The wonderful thing about our access rights in Scotland is that they don't discriminate. Everyone has an equal right under the law and access rights and they cover all recreational activities from dog walking to ice climbing, from having a picnic to descending rapids in a kayak. Instead of taking a different approach for different groups and different outdoor spaces, which just adds to the confusion and unfairness, the Scottish Government would be much better to recognise that the risk of Covid 19 being spread by going outdoors and undertaking the activities covered by access rights is generally very low as long as physical distancing is observed.

Were the Scottish Government to recognise this, it could then use access rights and the Scottish Outdoor Access Code as the basis for managing Covid-19 in the outdoors going forward, with some extra resources allocated to access authorities to manage potential visitor hotspots. Scotland has a real advantage over England and Wales here because our access rights are comprehensive, making it easier for people to disperse and observe physical distancing, and because the SOAC provides a mechanism for delivering advice on how to exercise access rights responsibly. .

Legally, all the Scottish Government would need to do to enable this is to amend the Coronavirus Regulations to allow people to leave where they are living for their mental well-being as well as physical exercise. That would cover all the activities included under access rights. The Regulations could then require people, when going outdoors for these purposes, to observe physical distancing and follow any supplementary guidance in place on how to reduce further the small risks of Covid-19 being transmitted outdoors. This would cover such matters as opening farm gates, only half addressed in the SNH guidance, and when to keep dogs on lead for disease prevention purposes, as covered in the Agricultural and Rural Delivery Guidance. ALL such supplementary guidance would best be gathered in ONE place as a supplement to the SOAC.

It's become clear in the last few weeks that the corona virus is going to be here for some time. The oversimplistic message, "Stay at Home", is completely inadequate for controlling the virus going forward. The Scottish Government needs to develop a series of plans covering different circumstances depending on the risks. Within this context activities that take place outdoors, whether recreational or work, where the risks of transmission are very low, can be easily managed by physical distancing. The vast majority of the population now understands and respects this. The Scottish Government should therefore now be relaxing the restrictions that prevent people going outdoors (for the day) for whatever reason. It should combine this, however, with ensuring that public authorities are given extra resources so that any issues can be managed locally, from visitor hotspots which could become overcrowded including greenspace in towns to the need to ensure that facilities such as public toilets are regularly cleaned so that people know they can wash their hands safely.

Addendum

Since writing this I have discovered that Covid 19 advice on NHS Inform ([see here](#)) states that people with certain health conditions can, like dog walkers, exercise more than once a day:

"You can exercise more than once a day if you have a specific condition, such as autism or learning disabilities."

Still no provision for children or older people and no provision to go out for mental well-being. It adds however to the incoherence of the Scottish Government position.

Category

1. Access rights

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