

Covid-19 – Scottish Government's guidance on travel for Outdoor Recreation breaches fundamental Human Rights

Description



Looking North East from near summit of Dun Law to White Law and Louise Wood Law – Elvanfoot is

On Saturday, I once again ignored Scottish Government guidance and drove 50 miles south from Glasgow to go walking in the Lowther Hills. I was doing nothing illegal and, unlike on Durisdeer last week ([see here](#)) where we saw two people, this time we saw nobody at all. These hills could have had

a thousand walkers, 10% of them carrying Covid-19 asymptotically, and there would have still been very little risk of spreading the illness. There was no need to go into local communities and plenty of space to Stay Apart. A ban on people walking here or having a picnic by one of the rivers has never been justified

Despite all this, I was apprehensive driving south. I was concerned that the irrational attacks on social media of anyone driving to go for a walk in the countryside might prompt the police to stop cars and ask people where they are going. It's not a nice feeling. It makes one appreciate how black people – who get stopped by the police when driving more than anyone else – are made to feel the whole time.

That feeling was increased by the signs on the motorway gantries – we must have passed under ten – saying “Stay at Home. Protect the NHS. Save Lives”. These messages are now a government sponsored lie. Staying at Home no longer does anything to protect the NHS, in fact it contributes to exactly the opposite. It is people staying in their homes that has caused the epidemic of ill-health, both physical and mental, and a failure of people to seek medical treatment when they need it, hence the hundreds of “excess deaths” in Scotland. Not going further than five miles from your home for a walk, as the Scottish Government advises, will do nothing to save lives.

It is now 9 weeks since I blogged about Covid-19 and Human Rights ([see here](#)). It is worth quoting from the briefing to the Chair of the UK Parliament's Human Right Committee again:

“This lockdown is the most significant and blanket interference with individual liberty in modern times. Such extreme measures can only be considered lawful, justified, necessary and proportionate if (1) the threat from disease and death remains sufficiently significant to justify such extraordinary measures; (2) the measures only interfere with human rights and civil liberties to the extent necessary; (3) the measures are enforced in a clear, reasonable and balanced manner; (4) enforcement is authorised, and does not go beyond what is prohibited, by law.”

And

“Additionally, it may be necessary specifically to consider what measures are proportionate to facilitate reasonable exercise for those living in crowded cities without ready access to outdoor spaces, where the policing and health risk challenges are very different from those living in rural or less populated areas”

The continued attempts by the Scottish Government to restrict travel by car in Scotland are not proportionate. Traveling by car does nothing to spread Covid-19, unless like Dominic Cummings you are sharing a car with someone who had symptoms. It's what happens when you get out that is important and going for a walk in the countryside poses almost no risks.

Strangely, the UK and Scottish Government have significantly different interpretations of the risks based on advice from the UK Scientific Advisory Group for Emergencies. Boris Johnson, states that the scientific advice is that the risk of spreading Covid-19 outdoors is “much lower” than indoors. Nicola Sturgeon states it is “lower”. That is an important difference. In this case, I think Boris Johnson is right. Here is what SAGE said on lifting the restrictions over a month ago:

“Some potential policy changes, such as permitting more outdoor activities that maintain social distancing (such as sitting outside alone or as a household), will have a negligible impact on R”.

I try to avoid party politics but for anyone who believes Boris Johnston is soft on outdoor recreation compared to Nicola Sturgeon, in England they doubled the fines for breaching the Physical Distancing rules at the time they first relaxed the restrictions. England has also set smaller limits on gatherings, 6 people as opposed to 8. While being outdoors is generally safe, of the two activities, going for a walk or meeting up with another household for a few hours outside, it's pretty obvious which has the higher risk of spreading Covid-19. Yet the Scottish Government's guidance is you can travel to meet up with a relative but not travel further than five miles to go for a walk. This is not rational or proportionate and is unjustifiable.

Where are the advocates for human rights and civil liberties in Scotland?

The Scottish Parliament has an Equality and Human Right Committee which has been taking evidence of the handling of the Covid-19 crisis ([see here](#)). The Committee has looked at some very important issues, particularly the way the lockdown has affected parts of the population far more than others, but it has not looked at to what extent the curtailment of civil liberties as a whole that came with the lockdown, and continues, is proportionate.

This may be, in part, due to the evidence that has been submitted to the Committee. People and groups have submitted evidence about HOW particular groups have been affected, not on whether the restrictions of their rights was justifiable or not or how the population as a whole has been affected.

The Scottish Human Rights Commission, created in 2008, has also done good work during the crisis ([see here](#)). At the end of May it repeated ([see here](#)) its call that restrictions must be "*lawful, necessary, proportionate and time-limited*". It has, however, made no assessment about whether the Scottish Government's restrictions were or are actually "lawful", "necessary" or "proportionate" or whether the time they have lasted can be justified. Initially, the public were told lockdown was for a few weeks. It has now been almost three months and it took nine weeks before the Scottish Government changed the Restriction Regulations to allow people to go out of their homes for their own mental well-being. That surely should be a serious human rights concern?

As in many other policy areas – like physical activity and mental well-being – extensive policy work has been undertaken in Scotland on Human Rights. For example, the First Minister set up a group on Human Rights Leadership that reported in 2018 ([see here](#)). It recommended further incorporation of human rights into law. All that policy work appears to have been ignored since the outbreak of Covid-19, whether this has been confining Older People to their rooms in Care Homes or stopping people going outdoors.

The weakness of our human rights and civil liberties in Scotland is demonstrated by the lack of any significant body speaking out against or challenging the restrictions. Where are the lawyers challenging the curtailment of civil liberties? Where are the organisations prepared to question the Scottish Government's approach? Part of the explanation for this silence is that many of the organisations who might have been expected to speak out receive some public funding and appear frightened of losing this. Hence the constant repetition of "follow the government advice", even when many people know its not justified and having adverse affects. The problem, however, is deeper than that. Tourism businesses, which rely on people visiting the countryside, have felt unable to defend the

rights on which they depend, despite experiencing the terrible impact of the Foot and Mouth lockdown on the countryside.

A week ago Nicola Sturgeon, in her daily briefing ([see here](#)), threatened those traveling further than five miles for Outdoor Recreation as follows:

“But it is worth being clear, in fact I have a duty to be clear with you, that if there is continued evidence of even a minority not abiding by those guidelines and traveling unnecessarily – if people meet up in larger groups or make journeys which risk spreading the virus – we will have to put those restrictions, on group size and travel distance, into law.”

The First Minister then went on to correct herself and say that group size is already restricted by law. Hence her warning was clearly aimed at people for traveling for outdoor recreation. Some of the grounds for her concerns were ridiculous:

“Overall, transport yesterday was 70% up from the previous Sunday. Transport on Saturday was 60% up on the week before.

In some places – like Loch Lomond and Glencoe for example – the increase was even more dramatic.

On Saturday, on the A82 by Loch Lomond, traffic was around 3 times higher than the previous Saturday. We saw a similar picture around Glencoe.”

Traffic, in itself, does not spread Covid-19, it's what happens when people get out that matters. It is far better that people are going outside, camping even, than that they are meeting up in their houses. Moreover traffic levels in places like Glen Coe had been incredibly low a week before.

I didn't hear a single organisation challenge the First Minister about these threats, that was left to individuals, in the press and on social media:

“NOW behave! I’ve given you a sweetie – enough! Do you want to go back into lockdown? I’ll do it! I really will!”

Welcome to the delusional world of Nicola Sturgeon and the Scottish Government.

It is glaringly obvious that the only credible policy in respect of dealing with the coronavirus outbreak is to manage social distancing – now that’s policy for the long-haul. The UK won’t go into complete lockdown again – a panic reaction in the first place – because the country simply cannot (economically) afford to.

Of course, the powers that be can cherry-pick a few thousand people to arrest and charge, or lockdown a few localities here and there, in order to make it look like they actually know what they’re doing – but this will fail against the tide of public opinion.

The mantra “we govern / police

Letters Herald 3rd June

It is very positive that more people are now speaking out, but if the Scottish Government does decide to try and impose the lockdown on harmless outdoor recreation we will need people who are prepared to do more than that.

Police Scotland appears to have taken Human Rights far more seriously than the Scottish Government. It has engaged an independent review, chaired by John Scottish QC, of how it has enforced the “unprecedented” three main powers it was given under the Coronavirus Restrictions Regulations:

- To take someone home or take them to be tested if they were thought to be infectious.
- To close a wide range of non-essential businesses.
- To restrict people's rights to move around in public or be part of a gathering.

The Independent Advisory Group started taking evidence on 1st June and will do so until 1st September ([see here](#)). In my view, apart from the Crianlarich hillwalkers ([see here](#)) and the disproportionate enforcement activity around south Loch Lomond([see here](#)), the police have been very sensible about the way they have enforced the law as it affects peoples’ rights to move around. I would encourage people, however, to respond even if it is only to say you did not drive to go for a walk in a safe place because you were concerned that you could be stopped by the police.

The Review won’t, however, address the wider problem which is that if the law is unjust, the police still have to enforce it. If therefore the Scottish Government does try and bring in legal restriction on traveling for outdoor recreation, then the police will have little choice but to apply those restrictions. What this illustrates is the need for a much wider inquiry into the Scottish Government’s respect for Human Rights during this corona crisis and the extent to which its restrictions have been proportionate.

The closure of visitor facilities

Whether the Scottish Government’s advice to Public Authorities to keep car parks closed, once they started to release the lockdown 10 days again, is a curtailment of civil liberties is a more complex argument. People’s right to go out and go for a walk anywhere, does not mean people should have a right to park anywhere. As long as the road network as a whole is kept open, the government could argue that it was being proportionate in keeping certain car parks closed.

Whether keeping car parks closed was sensible, however, is another matter.



Ben Ledi car park last weekend May in the Loch Lomond and Trossachs National Park

With car parks still closed, cars were taking up every available non-car park space.



Parking along road by Ben Ledi turn-off

People were quick to condemn visitors for irresponsible parking and “flouting” Scottish Government Guidance on social media. But the person who sent me these photos said there was no crowding on any bike trail, on any local hill nor on any core path. People going to areas in our National Parks are generally not contributing to the scenes (often photographed with telephoto lenses which condense distances so they appear close together) witnessed on beaches. The focus on outdoors recreation is a distraction from the real problems.

What needs to happen

The Scottish Government in trying to restrict people’s rights to undertake Outdoor Recreation and to travel to do this has disproportionately restricted human rights and civil liberties. The Scottish Government needs to:

- 1) Recognise that outdoor recreation poses minimal risks in terms of spreading Covid-19 and reflect this in law and guidance
- 2) Stop trying to prevent people from travelling by car (public transport is far more complicated) for outdoor recreation and ensure the road network is open across Scotland
- 3) Amend its advice and call on Public Authorities and others to re-open all car parks immediately and to put in place appropriate arrangements for managing these

As for the public, we should not to be intimidated. If Nicola Sturgeon tries to re-impose unjustifiable restrictions on our freedom of movement and ability to travel for outdoor recreation, I personally have

decided I will make a point of breaking the law. I will also challenge any consequent attempts to charge me in Court on the grounds that it is an unjustified restriction of my human rights and civil liberties. Judging by the number of people now going out for walks, people have now decided to vote with their feet and I will be far from alone. Please let both politicians and outdoor recreational organisations know that the Scottish Government's continued attempts to restrict outdoor recreation is senseless and unjustifiable.

Category

1. Access rights
2. Loch Lomond and Trossachs

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4. visitor management

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