

Covid-19 – the abuse of legal powers in the Loch Lomond and Trossachs National Park

Description



The message has changed from the National Park being closed to visitor facilities being closed

Two weekends ago Police Scotland charged the same number of people for breaching the camping byelaws in the Loch Lomond and Trossachs National Park than had been charged over the whole of the previous three years. Stirling Council’s response to people traveling into the National Park after the first phase of lifting of lockdown was announced was to use Temporary Traffic Regulation Orders to close the public roads to Rowardennan and to the Bracklinn Falls at Callander ([see here](#)). While the Scottish Government was gradually relaxing the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 ([see here](#)), giving people back their civil liberties, in the National Park legal restrictions were being increased.

Both measures are, in my view, an abuse of existing laws. They follow what appears to be the disproportionate policing of visitors to Balloch ([see here](#)) and the very serious charges levied against two hillwalkers who appeared to require the mountain rescue near Crianlarich ([see here](#)). This post takes a critical look at what has been happening.

Police use of the camping byelaws

On 12th June the Daily Record ([see here](#)) reported that:

“A total of 32 people were charged with a variety of byelaw offences relating to camping and setting fires within the National Park. Most were around Loch Earn, Loch Venachar and Loch Lubnaig.

That is the same figure the LLTNPA stated in their Report to Ministers had been charged under the camping byelaws in the previous three years:

- Between 2017 and 2019 a total of 86 people, associated with 11 cases, were reported to the Procurator Fiscal by both the National Park Authority and Police Scotland for offences relating to contraventions of the byelaws or the Environment Protection Act. [See Appendix 1]
- Of the 21 cases reported by the National Park Authority specifically to contraventions of the byelaws, six related to the Environment Protection Act, and four were a combination of both.
- Police Scotland took forward 17 cases, 15 of which related to contraventions of the byelaws and two that related to both the byelaws and the Environment Protection Act.
- From the cases reported by the National Park Authority, 11 people so far have a criminal record as a result of breaching the byelaws, 6 as a result of breaching the Environment Protection Act, 4 as a result of breaching both, and 1 person as a result of a combination of both.
- None of those charged by the National Park Authority received a criminal record purely for contravening the byelaws or setting up a tent or shelter.

Extract from Report to Scottish Ministers signed off by LLTNPA Board in March 2020

The LLTNPA had reported 11 + 4 cases, Police Scotland 15 = 2 cases, total 32.

The LLTNPA has consistently said that the camping byelaws were only ever intended to be used as a last resort and re-confirmed that in their Report to Scottish Ministers three months ago ([see here](#)):

“The approach of the National Park Authority has always been proactive engagement and education first, with enforcement of byelaws where they exist, only used as a last resort when necessary.”

Whether you agree with them or not, the statistics show that up until now the camping byelaws had only been used as a last resort. Now, however, the police appear to be using them as a first resort. There

is no other way of interpreting the statistics. A law intended for one purpose, to get campers to behave more responsibly, is now being used for another, to ban them completely. That is wrong, a mis-use of the law.

If camping was illegal under the Coronavirus Restriction Regulations Police Scotland could have issued a Fixed Penalty Notice of £60 (or £30 where paid promptly) and, where people failed to move on, could have kept re-issuing FPNs until they had reached the maximum fine of £960. Most people, faced with that, would have taken the £30 hit and left. Instead, the Police appear to have charged people under the camping byelaws, where the fine is £500.

That the police have used the camping byelaws strongly suggests that camping is no longer illegal under the Coronavirus Restrictions Regulations. The explanation for this is that camping is a form of outdoor recreation and the Regulations now allow people to leave their home for outdoor recreation without time limit. That would also explain why there was no mention of campervanners being charged in the Daily Record story. If this is correct, it makes the police decision to charge 32 campers under the camping byelaws even worse, an abuse of their powers. Instead of asking people camped without a permit in the camping management zones to leave, as they have done for the last three years, the police have simply charged them.

The 32 people charged for camping in the National Park's camping management zones appear to have been victimised and the police appear to have mis-used the camping byelaws to make a public example of one group of people. It would be public interest to know if the new National Park Police Officer, who took over from PC Barr at the end of last year and is paid for by the LLTNPA, was involved.

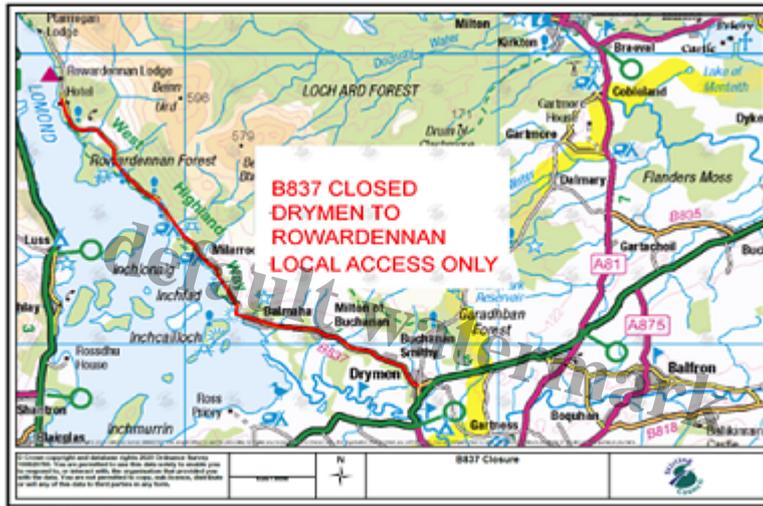
Stirling Council road closures

Emergency Road Closure: B837, Drymen to Rowardennan

The B837 road will close from Friday 5th June until Thursday 25th June 2020. This will run from Drymen to Rowardennan.

This closure is to ensure public safety.

Please Note: Access will be maintained for locals, buses and emergency services.



Predictably, the first weekend out of lockdown, many people decided to discount the Scottish Government's advice not to travel more than 5 miles and escape the crowded parks and paths in the central belt towns for the countryside. They were welcomed by blocked off car parks, closed toilets and an absence of National Park Rangers. Unsurprisingly people parked where they could, on road verges etc. The response of our Public Authorities to their own failures, was to blame visitors:

The relaxation coincided with the warmest weather yet this year and consequently the National Park experienced the full impact of an unprecedented set of circumstances stemming from mass non-compliance with the guidance not to travel more than 5 miles. Many places were inundated with large amounts of irresponsible and dangerous parking on road verges in hotspots like Arrochar, Luss, Balmaha, Falls of Falloch, Loch Lubnaig and parts of Callander. There were large gatherings of people in Balloch and Luss and huge amounts of litter left at sites such as Falls of Falloch. Despite the Duncan Mills Memorial Slipway remaining closed, there was significant powered craft activity on Loch Lomond, particularly jet-skis using alternative access points.

(Extract from LLTNPA CEO Update to Board meeting Monday 14th June [see here](#)).

Words and phrases like "mass non-compliance", "inundated", "irresponsible", "dangerous" and "huge amounts of litter". Rather than admitting their mistakes and addressing the issues by opening car parks and toilets, re-starting litter collections etc, government agencies decided to make it even harder for people to visit by taking a number of new measures:

â??This included road restrictions (local access only at East Loch Lomond, temporary speed restrictions and/or clearways at A82 Falls of Falloch/A84 Loch Lubnaig), extensive mobile variable signage, additional Police Scotland patrols, traffic enforcement officers, Ranger land and boat patrols, and an enormous amount of litter has been collected from heavily visited sitesâ?•

While Transport Scotland imposition of speed restrictions on two trunk roads may have been an appropriate response to the great increase in roadside parking caused by the closure of public car parks, none of the other public agencies did anything to help. Instead, their focus was on bans and enforcement.

Stirling Councilâ??s decision to use Temporary Traffic Regulation Orders to close the roads to Rowardennan and the Bracklinn Falls, provides another example of a public authority abusing their powers. On 28th April Transport Scotland issued advice on the use of TTROs during the Covid-19 crisis ([see here](#)):

â??in response to requests from local authorities regarding ongoing physical distancing measures and the potential need to close roads to traffic or reallocate road space in favour of pedestrians and cyclists allowing for physical distancing measures.â?•

The idea was to use TTROs to help the public by creating temporary traffic free areas and favour pedestrians and cyclists. Instead, Stirling Council has used them to exclude the public. They have been able to do this because the legal basis for TTROs is that a danger exists to the public. Transport Scotlandâ??s advice was that council could justify closing lanes on roads to enable the public to walk or cycle safely on the carriageway as well as on pavements â?? as people have been doing all over the southside of Glasgow. The only reason there was any danger to the public on the Rowardennan or Bracklinn Falls roads was that the public car parks at the road end had been closed. Instead of addressing the problem, Stirling Council closed the roads. That is another abuse of power.

The role of the Loch Lomond and Trossachs National Park Authority

At the LLTNPA meeting on Monday 15th June, which was broadcast live at the time (but is no longer available public), one of the Stirling Councillors, Graham Lambie, asked if the Park Authority couldnâ??t approach the Scottish Government to get their 5 mile advisory travel limit enshrined in law. No-one argued against this or questioned why Public Authorities in the National Park were using their legal powers to enforce what was only government guidance. Nor did any Board Member pick up on the excellent point made by Ronnie Erskine later in the discussion about the amount of physical and mental health problems that have been caused by the restrictions.

Instead, the Board Papers confirm that the LLTNPA appear to have been the driving force behind all these restrictions, chairing the â??National Park Safe Recovery Action Groupâ?• which agreed them:

5.6. In addition, our own visitor sites cannot be cons working closely with partners, particularly local authorities, Forestry and Land Scotland, and Po up approach to reopening visitor sites. To enab regular meetings of a new National Park Safe F that is working collaboratively on this. The grou responses to the recent visitor influx that coinci also are in regular communication with our Sco ensure we are considering the national context broader approach to lifting restrictions.

The LLTNPA appears set to continue in the same vein:

â??The group will continue to meet to co-ordinate resources, enforcement and traffic management actions as well as future phases of reopeningâ?•.

This is from an organisation that has a statutory duty to promote public enjoyment of the countryside. Evidence for how the police and local authorities have acted elsewhere suggests it may have been the LLTNPA that has been responsible for pushing the police and Stirling Council to abuse their powers.

Outwith the National Park, Police Scotland appears to have policed the corona crisis appropriately despite the recent controversy over policing of protests. They have been clear that they can enforce the law, including activities that were made illegal under the Coronavirus Restriction Regulations, but not government guidance. They have set up an inquiry, under John Scottish QC, to look at whether they have respected human rights. The Black Lives Matter demonstrations and the counter protests have put the police in a very difficult position because, under the Restrictions Regulations, any gathering over eight people, is a criminal offence whether or not people observe physical distancing. To protest is an offence, to travel to the countryside for outdoor recreation is not.. The Scottish Police Federation chair, David Hamilton, put his finger on the political guddle when he said on Friday: *â??there was more condemnation of people going to Loch Lomond than there was of people attending any of the mass protestsâ?•.* Mass protests generally pose far more risks of spreading Covid-19 than visits to the countryside.

This re-inforces the point that the police response in the Loch Lomond and Trossachs National Park has been disproportionate and out of kilter to their approach in the rest of Scotland: the high level of

finer at Balloch, the charges against hillwalkers (and there were another two near the Cobbler) and now 32 campers charged under the camping byelaws. A possible explanation for this comes from the Daily Record story:

Police have been quick to warn people heading to local beauty spots this weekend that officers will be out and about and that it remains illegal to set up camp or start a fire in the National Park while it is closed.

The National Park isn't closed, no-one has the power to do that, although the LLTNPA was doing its best to suggest the opposite:

 All National Park visitor facilities and buildings are now closed in light of COVID-19/Coronavirus. Please see this time.

There are similar questions about the proportionality of Stirling Council's response compared to other Local Authorities. Perth and Kinross Council, for example, appear not to have closed off any of their car parks during the crisis. Fife Council was quick to re-open their car parks as soon as lockdown was relaxed. By contrast Stirling and Argyll and Bute, the two main councils in the Lomond and Trossachs National Park have continued to follow slavishly the government's advice on car parks. Sadly, it appears access in the LLTNPA is being managed worse than anywhere in Scotland.

That there is another way has been nicely illustrated by the Police on the Isle of Man:



Isle of Man Constabulary Central Neighbourhood Policing Team ...

June 19 at 7:44 PM · 🌐

Last night officers were patrolling a beautiful and remote spot and came across a group of young school leavers camping. No doubt before we arrived they were loud and messing around but that's not always a bad thing. They are part of our Island community and they too have probably struggled and worried over the last few months and not been able to seek solace with their peers. A deal was struck with them as follows... behave , be good, be happy and be nice and make sure you clean up any mess before you leave. They happily gave us their names and those of their parents and a promise was made, a deal was struck. One of trust and respect for each others role and position. Do you know what happened? They stayed and were with each other and in the morning they cleaned up after them and left the place spotless.



When with the LLTNPA, and the agencies it works with, stop treating people as a problem and instead start to facilitate their enjoyment of the countryside and the huge amounts of space in the National Park?

Category

- 1. Loch Lomond and Trossachs

Tags

- 1. camping
- 2. Camping bye laws

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