

The access implications of legal restrictions on the right to travel

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# Now, more than ever, we must be allowed to maintain our access to the outdoors

NICOLA Sturgeon's denial that legal limits on travel would constitute "state over-reach" ("Sturgeon denies possible travel bans would be 'state over-reach'", The Herald, November 5) is wrong in respect of people visiting the countryside for outdoor recreation.

Under human rights law restrictions on civil liberties need to be justified by evidence and be proportionate. Scientists established months ago that the risks of Covid-19 being transmitted outdoors is minimal as long as people stay apart. And the Scottish Government has accepted this.

No evidence has been produced to substantiate fears expressed earlier in the year that Covid-19 might be transmitted by people going to the beach, visiting beauty spots or touching farm gates. This is not to claim there is no risk, only that it is tiny and under human rights law therefore it is not proportionate to restrict people's right to travel to and through the countryside in order to protect the health of the population.

George Dale (Letters, November 6) is also wrong to claim there is no point issuing advice on travel without legal restrictions. The legal restrictions imposed in March were based on when people could leave their homes, whether for work, physical exercise or to care for someone, not on which local authority area you could go to or from if you had a "reasonable excuse". This worked through consent not policing. Mr Dale fails to explain how the police, even if they had the resources to set up roadblocks between local authority areas, could be expected to determine why someone was travelling. Is everyone in Scotland now to be issued with an identity card and a letter stating where and when they can travel?



Should travel restrictions be eased to allow access to great outdoors?

What the Scottish Government needs to acknowledge is that it is not travel in itself that spreads Covid-19 between areas, it is what people do when they arrive. And, more specifically, that having travelled from a higher-risk area people should not be mixing with other people indoors. Hence the need for people arriving from abroad to be quarantined. The Scottish Government would be far better to ask the police to help with enforcing quarantining measures. These are essential if contact tracing is to work, rather than attempting to restrict people's right to leave their council area.

The importance that access to green space and to the countryside has for physical and mental health has long been established by scientific research. The consequences of trying to confine people indoors in their homes during the first lockdown should have been obvious, but there is now increasing evidence of the terrible toll this had on people's physical and mental wellbeing. The Scottish Government and its advisers need to avoid repeating those mistakes. While

there are undoubted dilemmas about where to allow people to mix indoors, the Government should at present be encouraging people to get outdoors for unlimited periods and wherever they choose, including overnight stays in tents or campervans. This would help relieve the enormous pressures people are under.

**Nick Kempe, Glasgow, G41.**

I was pleased to have this letter published in the Herald on Monday. While Nicola Sturgeon didn't introduce legal restrictions on travel yesterday, she made it clear that her government is working on them ([see here](#)):

â?? These will remain in guidance over the next week but we continue to prepare the regulations, and resolve the practical issues, that would be required to put them into law.

We will not hesitate to do that if we think that is necessary.

However, I appeal to people across the country, please abide by these travel restrictions now so that it doesnâ??t become necessary.

The threat is quite clear, so what is the current advice and does it make sense?

## **The Scottish Governmentâ??s position on outdoor recreation**

At present taking exercise outdoors is one of the â??limited exceptionsâ?? (actually there is a long list) to the guidance not to travel out of tier 3 or tier 4 areas ([see here](#)) :

- local outdoor informal exercise such as walking, cycling, golf, or running (in groups of up to 6 people from no more than 2 households) that starts and finishes at the same place
- travel locally (within around 5 miles of your local authority area) to reach a place to take exercise outdoors

There are two points to note about this advice and both have major implications.

The first is that travelling for outdoor recreation, unless this is in the form of outdoor exercise, is not on the list. Effectively, despite the large increase of mental health problems caused by lockdown and the well known importance of green space for peopleâ??s mental health, once again people are being told that you cannot travel to a green space of your choice. This means the Scottish Governmentâ??s advice to much of Scotlandâ??s population is that we should not be exercising many of our theoretical access rights, like the right to sit on a beach or enjoy the sea. Also that other activities included under access rights, such as to watch birds or animals and take photographs or draw the landscape, should only be done if you can do this from your front door. It seems the Scottish Government has learned nothing about the importance of outdoor recreation more generally since the March lockdown.

The second concern is the advice that outdoor exercise should be kept local. In the eight months since the first lockdown, Government advice appears to have shifted from saying that you can exercise from your front door to you can travel 5 miles to start taking exercise. What this means for those of use who live in Glasgow is that we are being advised we can take exercise in other densely populated urban areas like Motherwell, Hamilton, Newton Mearns, Barrhead or Paisley (there is a bit more countryside on the north side of the city) but not in the countryside beyond.

The prospect of the Scottish Government enshrining this in law makes no sense and is chilling from a human rights perspective. It cannot be repeated too many times, all the evidence shows that the

likelihood of Covid-19 being transmitted outdoors, so long as people keep apart, is very low.

If you have not read them, I would commend the update Mountaineering Scotland issued to members a few weeks ago ([see here](#)) and the paper they referred to on mountaineering and the risks of spreading Covid-19 ([see here](#)). Both are relevant to all forms of outdoor recreation.

Yes, there is a theoretical risk that people who travel to enjoy the countryside might have asymptomatic Covid and unwittingly spread this by touching gates, using a public toilet or spreading aerosols containing the virus more than two metres when they are out of breath. But there is no evidence that any of these scenarios have played any part in the steep rise in covid-19 cases since the release of lockdown. Indeed, despite all the fears about crowded beaches and beauty spots over the summer, it was ONLY when people started mixing indoors again that the second wave of Covid took off. The physical and mental health consequences of stopping people travelling for outdoor recreation and to repeat not every vulnerable person feels safe exercising close to where they live vastly outweigh the risks of outdoor recreation spreading Covid-19.

The starting point for the Scottish Government therefore should be that whatever the extent of the virus among the population and I don't deny it is very dangerous and needs tackling people should have a right to travel for outdoor recreation, as long as the travel can be undertaken safely. That baseline should include the right of people to go camping and campervanning, as those activities don't require people to use indoor spaces used by others.

## **Visitor infrastructure and outdoor recreation**

I do, however, believe the Scottish Government could also safely allow people who want to go out into the countryside to access some indoor spaces that support outdoor recreation, from public toilets to accommodation where people can be self-contained, from glamping pods to second homes. I spent a week in a self-catering cottage in Lochcarron at the end of October. On the hill, we hardly saw anyone all week fewer than I pass walking to the end of my street in Glasgow while our only contact with locals was filling up with petrol and patronising the village shop. The safety precautions the Spar had put into place were fantastic and the likelihood of virus transmission miniscule as a result. But if local people had been concerned about us using the shop we could have come completely sufficient.

Unfortunately, the Scottish Government's current position on visiting the Highlands a tier 1 area with the least restrictions is completely muddled. While more businesses can stay open than in the central belt, the advice on travel, if observed, would mean that almost no-one would be able to patronise them. Self-catering remains open but only to other people from the Highlands and Islands. The vast majority of tourists come from the central belt or, dare I say it, England. This threatened to bankrupt lots of local tourism businesses and probably partly explains why the Scottish Government threatened to place the whole of Scotland into lockdown again, so that rural businesses left high and dry could access furlough monies.

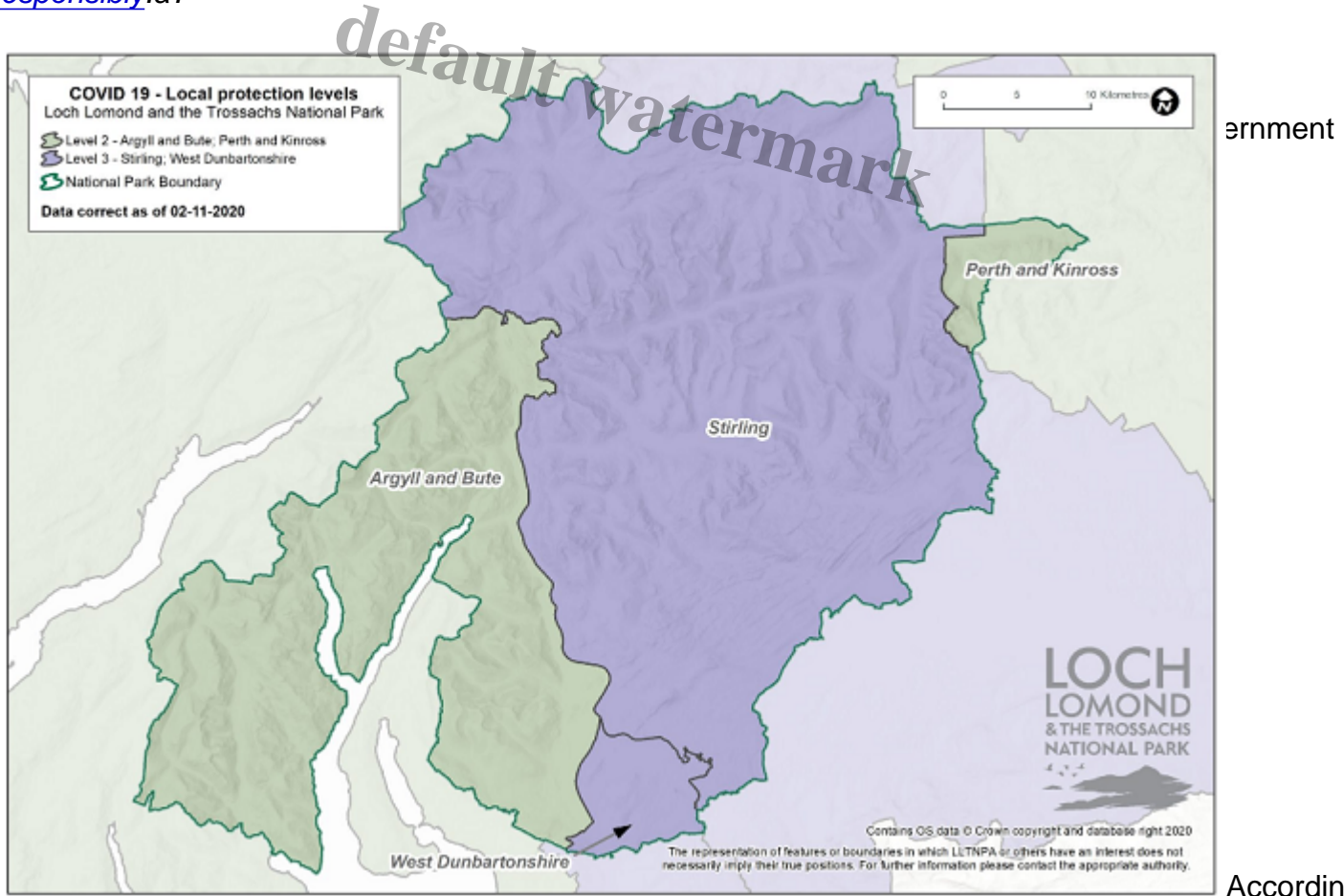
There must be a better way of working out what tourist infrastructure could safely be left open to support outdoor recreation, based on science. This would provide much needed relief to people cooped up in urban areas and help reduce the current pressures faced by local businesses.

## The current position in the Loch Lomond and Trossachs National Park

I have been pleasantly surprised by the Loch Lomond and Trossachs National Park Authority's most recent advice to visitors ([see here](#)), issued in response to the advice from the Scottish Government. They are no longer advising people to keep away the National Park, as they did during the first lockdown. Instead, they are advising people to think before visiting and, as advocated on parkswatch, have given people ideas of alternatives to crowded beauty spots. They could have given even more options if there were better visitor facilities, including a better core path network, in the National Park.

The LLTNPA aren't even trying to discourage people from overnight visits camping:

*While the Camping Management Byelaws have finished for 2020 and you do not need a permit to wild camp until March 2021, please plan your visit in advance and read our guidelines on [how to camp responsibly](#).*



to the Scottish Government's advice, if you live in crowded West Dunbartonshire, you should go further down the west shore of Loch Lomond than Luss, but if you live in Luss it's ok to travel

wherever you want in Argyll and Bute. It should be obvious by now that the risks of the virus being spread by anyone walking up the Cobbler are minimal, even if they do call on the rescue, and it really doesn't matter where they come from. I do have some sympathy, therefore, for LLTNPA officials who need to be seen to be following the Scottish Government line.

However, while the LLTNPA's advice is now better than it was, unfortunately no lessons appear to have been learned when it comes to visitor infrastructure. For example, a quick check on what toilets remain open around Loch Lomond shows [\(see here\)](#):

- Rowardennan, closed for the winter
- Milarochy Bay, only open 9-4pm weekends
- Balmaha, closed (still)
- Firkin Point, closed
- Tarbet and Inveruglas, 9-4pm

From a hillwalking and mountaineering perspective or for people travelling distances for purposes clearly allowed in the advice, this is useful. Even where toilets are open, on short winter days mountaineers are likely to be on the hill before 9am and lots of people travel in the dark.

The Scottish Government's advice, unfortunately, provides the LLTNPA and organisations like it every excuse they need to close facilities and save money.

## What needs to happen

It is long past time that the Scottish Government stopped paying lipservice to outdoor recreation and started to promote it as something that everyone could safely do during this dreadful pandemic, whether or not it involves travel.

The prospect of legal restrictions, which would make it a crime to travel to go for a walk, are chilling. Luckily, I believe they are unworkable. How could the police ever check where a person was from and where they were going? The cost of putting up roadblocks five miles behind every crossing point into a local authority area, or even on their borders, would be phenomenal. It would be far more sensible for the Scottish Government to concentrate its efforts on ensuring that when people travel, they don't put people at risk when they get to their destination.

Asking the police to check on people parked in rural laybys or at popular starting points for outdoor recreation is completely disproportionate and a diversion from the real problems. I hope the Scottish Government think very carefully before trying to restrict travel by law but if they press ahead regardless with measures that restrict people's ability to enjoy the countryside, I think people will need to start protesting.

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