

The Review of the Loch Lomond byelaws (3) – the implications for people’s rights and what needs to happen

Description

The recommendations in the Review of the Loch Lomond byelaws being considered by the Loch Lomond and Trossachs National Park Authority (LLTNPA) this afternoon ([see here](#)) have important implications and serious for people’s rights.

The right of navigation on Loch Lomond

As I have explained in my last two posts ([see here](#)) and ([here](#)), the LLTNPA’s attempt to introduce power boat free areas on Loch Lomond was based on a biased process and flawed analysis of the issues but only thwarted by the threat of legal action by boating interests. That resulted in a much more sensible idea of speed limits but, rather than apply this fairly and to all boats, it appears the LLTNPA is still fixated on the idea of motorboat free areas: at the centre of its senior management’s plans for the future is the proposal to remove the right of navigation on Loch Lomond.

5. That the Scottish Government commits to work with the National Park Authority to discuss and explore legislative measures which can ensure that the National Park Authority is **not legally constrained by the assumed historic Right of Navigation** where byelaws may need to affect navigation to protect the public interest and the environment of the Loch.

This proposal and the reasons given for it in the Review Report are pernicious:

- 8.2 Considerable discussion has taken place around the implications of an historic Right of Free Navigation on the Loch which is assumed to allow free movement around the Loch. We view this historic right as no longer fitting for a contemporary National Park, with multiple competing uses on the Loch set in a world now experiencing the twin climate and nature crises. Legal advice is that to change this right would require new legislation, with resourcing implications over a longer timescale than the current byelaw review. This matter is covered in section 10.1, p 29 of the report.

The suggestion that the right of navigation is an assumed right is completely wrong. Loch Lomond was once a sea loch before the ice melted and the land bounced back up turning it into a freshwater loch. It was, however, still connected to the Clyde Estuary by the River Leven and treated as such by the Vikings. In 1263, for example, they portaged their boats over from Loch Long at Tarbet and then

travelled down the Loch and back out into the Clyde Estuary before being defeated at the Battle of Largs. Five hundred years later the McGregors, including Rob Roy, would take their birlinns down the Loch and then travel up the Clyde to Glasgow to collect provisions. Loch Lomond was the way people got around.

The history and basis for the right of navigation around Loch Lomond is therefore as long and sound as any Right of Way in Scotland. If the LLTNPA's argument was correct, that the right of navigation can only be assumed, it would imply there is not a single right of way in Scotland except where this has been confirmed through a court case. It is not the courts that establish these rights, it is customary use over periods of time.

It says something that this proposal and these comments come from an Access Authority that has a legal duty to protect historic rights of access! The LLTNPA, however, has a lamentable record in protecting this right of navigation. When the barrage was built across the River Leven below Balloch, arrangements were supposed to have been put in place to enable boats to be lifted over it. The LLTNPA has done nothing to make that happen. Moreover, in recent years has allowed Sweeney's Cruises to block access to the historic crossing by the bridge over the River Balloch.

Unfortunately, this is not an accident but, along with the closure of the Milarrochy slipway, an attempt by the LLTNPA to make it more and more difficult for boats to access the Loch. The logical conclusion to that process, from the perspective of the current Chief Executive who has been pushing this, is to try and get the Scottish Government to make a new law removing the right of navigation completely.

The suggestion that reviewing the right of navigation is necessary to address the nature and climate crises is laughable. The LLTNPA has produced absolutely no evidence to show that the use of power boats has had any significant impact on nature, that is despite the Scottish Centre for Ecology and the Natural Environment (SCENE) being based at Salloch. While most power boats currently require diesel, the right of navigation applies to all vessels, whether motorised or not, and is irrelevant to the challenge of how we transition away from fossil fuels.

When I first started campaigning against the camping byelaws, on the grounds it was not necessary or effective to remove people's rights to address issues of antisocial behaviour, if anyone had asked me I would have probably supported a ban on speed boats on Loch Lomond. To me, the noise affects the quiet enjoyment of the loch. However, the noise of cars speeding along the A82 is far more significant, has been made worse by the new section of road at Pulpit Rock and will be made even worse if Transport Scotland's A82 upgrade proposals ([see here](#)) go ahead. To date, the LLTNPA has accepted every single one of Transport Scotland's proposals so, for it to suggest in the Review Report that noise from powerboats is an issue, is completely hypocritical.

In my view the outdoor recreation community need to stand together, defend each other's rights and create solutions to problems through dialogue between the various interests. The LLTNPA has lamentably failed to do that in its Review of the Loch Lomond byelaws.

The proposal to create a Loch Lomond User Registration Scheme

Currently, all motorised vessels on Loch Lomond have to be registered with the LLTNPA and display a mark. The LLTNPA claim in the Review Report that this is not sufficient to enforce the byelaws, because people speeding for example when challenged provide false names and addresses. Their further claim is that the best way to address the problem is to require Users as well as boats to register with them:

It is proposed to progress this proposal without further changes. The byelaw associated with this proposal is:

2.1 REGISTRATION – MASTER No Master of a Power-driven vessel shall cause it to be used on the Loch unless that Master has first registered with the Authority as a Registered User by submitting to the Authority an application for registration, or renewal of registration, on a form supplied by the Authority containing such information and accompanied by such evidence and documentation as may from time to time be prescribed by the Authority and then receiving from the Authority confirmation that they are registered as a Registered User.

“Master” means the person aboard having the control or charge of a Vessel, and in the case of any Young person in control or charge of a Power-driven vessel with a greater engine power than 5 horsepower (3.7 kilowatts) it shall mean the Adult on the Power-driven vessel supervising the Young person in terms of Byelaw 3.5(4)(a).”

If an adult can be made legally liable for the action of a child, there seems no reason why the registered boat owner should not be made liable for the actions of anyone using their boat. If the LLTNPA had proposed that, they would have an easily enforceable solution to the issue of speeding boats etc. All rangers would need to do was record what the boat is doing and take enforcement action against the owner and have the power to impound any boat that was not registered. That would soon stop owners letting their boats be used by others who did not keep to the rules and would provide an incentive to hire businesses to ensure anyone hiring a jet ski, for example, kept to the rules.

Instead, the LLTNPA is proposing a new scheme which will cost a significant amount of money, probably most of the estimated £250k required to put the new byelaws in place, and then will cost large amounts of money to police. This is because unless the LLTNPA starts checking lots of individual boaters to see if they are registered, there will be no incentive to register. It seems the LLTNPA has learned nothing from the mistakes of the camping byelaws where lots of rangers spend most of their day going round the camping management zones checking on whether campers have the right permit.

One of the justifications the LLTNPA has given for checking up on people is it enables Rangers to have a dialogue about what they are doing and how to do so responsibly. This is rubbish, people don't need talking to each time they go camping and the checks have simply become an imposition on people who want to camp regularly. The same will happen to the motor boating community, each time someone is out on the Loch they will face being approached by a Ranger who will require them to produce evidence that they are registered. This is like something out of Brave New World or the experience young people in Scotland have had under stop and search. Amazingly the Review Report has not a single thing to say about the implications for civil liberties.

It is notable that a National Park Authority which now routinely refuses to divulge the names of staff responding to queries and whose Board members refuse to provide the public with contact details, now wants to collect large amounts of data about the public. Without photographic i.d it is difficult to see how anyone challenged for breaking the Loch Lomond byelaws could not simply provide the name and address of someone else. You can see where this is going, a faceless bureaucracy policing the public.

The wider implications are immense. Just as with the camping byelaws, there has been no cost/benefit analysis. The only way, however, that the LLTNPA is going to be able to fund this scheme in the long-term is to get the people they are forcing to register to pay for it. In other words, in the medium term the LLTNPA want to charge the users of motorised vessels for access, another attack on the right of navigation.

The proposal to make it obligatory for young people to wear life jackets

I remarked in my first post how not a single young person responded to this proposal and that there are questions about why such a measure should apply to young people and not to adults. It is worth making two further points.

The LLTNPA have not provided any evidence in the Review Report that a single young person has drowned on Loch Lomond through not wearing a life jacket when falling into the water from a boat. There have of course been a number of deaths of young people through drowning but this has been while swimming. There is no suggestion that young people should have to provide a certificate saying they can swim before entering the Loch without a life jacket, although such a draconian measure would save more lives.

Moreover, a survey back in 2011 showed that 94% of young people on boats were wearing life jackets anyway. The proposal therefore seems more about virtue signalling, that the LLTNPA is doing something about safety, than being based on any real need. It will, however, have potentially significant implications for young people out trying to enjoy the loch.

Sometimes it can be difficult to see whether someone is wearing a life jacket, particularly if they are in a cockpit of a boat. To enforce this byelaw LLTNPA Rangers will now start having to approach much closer to boats, check if young people are aboard and if so whether they are wearing life jackets. Again, there has been no cost-benefit analysis of this or consideration of the implications for civil liberties.

What needs to happen

1. That the Scottish Government confirm that the process associated with this byelaw review and as described in this report has been carried out fairly and to a required quality standard and that a byelaw review has been completed in compliance with legislation.

The first recommendation in the Review Report that the LLTNPA Board is being asked to approve this afternoon is set out above. This series of posts has shown that the process was not fair, it has been biased from the start and discriminated against users of motorised vessels on the loch. It has also not been to the required quality standard, containing misleading information and claims about the number of jet skiers.

In my view, therefore, the LLTNPA this afternoon needs to refuse to endorse the Review Report, undertake an inquiry into what has gone wrong – the provision of misleading information in a report to Scottish Ministers should be treated as a serious disciplinary matter – and consider how the LLTNPA can now produce a report that is fit for purpose. A start might be to ask the authors of the 2022 Boat Survey report to review independently the basis for ALL the claims made in the Review Report.

As part of their review of the Review the LLTNPA Board should also reject the proposal that the right of navigation on the Loch needs to be amended, take a serious look at the civil liberties and financial implications of the proposed User Registration Scheme and instead consider provisions that would make registered boat owners liable for an infringements of the byelaws.

If the LLTNPA Board Members fail to do this, in my view their fitness to sit on the board needs to be challenged and people should use the four week statutory consultation period to ask the Minister responsible for National Parks, the Green MSP Lorna Slater, to intervene.

Category

1. Loch Lomond and Trossachs

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