Camping rights and wrongs in England and in Scotland â?? what to do?

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Unlawful sign from Loch Morar sent by parkswatch reader. Camping is included in Scotlandâ??s access rights and the suggestion that the Land Reform (Scotland) Act and Scottish Outdoor Access Code state require people to seek consent from a landowner prior to camping in places such

as this is completely wrong.

Last week the Court of Appeal overturned a decision of the High Court in January that there was no right to wild camp on Dartmoor, the only place in England where such a right existed. The High Court judge had decided that wild camping was not a form of outdoor recreation and was therefore not included in the recreational rights conferred on the public by the Dartmoor Commons Act 1985. The three Court of Appeal judges took the opposite view, aware no doubt of the widespread protests that had followed the initial decision. They decided that wild camping is a form of outdoor recreation after all and, while their decision could still potentially be challenged in the Supreme Court, it is very welcome.

The law on wild camping in England is not so restrictive as often thought

The reporting of the Dartmoor appeal shows that there is still major confusion among the commentariat in England about the difference between access rights and access freedoms (see here).

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The Guardian, for example, reported:

â??Wild camping is once again allowed on Dartmoor after the national park won a successful appeal against a ruling in a case brought by a wealthy landowner.

Camping had been assumed to be allowed under the Dartmoor Commons Act since 1985, until a judge ruled otherwise in January. It was the only place in England such an activity was allowed without requiring permission from a landowner.â?•

This gets it completely wrong. What the appeal court judgement has done is to restore a statutory right which the High Court had removed through its interpretation of the term â??open air recreationâ?•. Contrary to what is claimed in the article, there is no law in England that says people require permission from a landowner before they can camp. While there are a few locations, such as Ministry of Defence Ranges, where there are specific laws or byelaws that prohibit or control camping (and indeed other forms of outdoor recreation) wild camping is generally a civil matter.

The High Court judge recognised this in his judgement when he stated that although the right to camp was not included in the rights bestowed by the Dartmoor Commons Act, people could â??take their chances on pitching a tent without the landowner knowingâ?•. While there is nothing in the law therefore which requires people to ask permission to camp, asking for permission from people like Mr Darwall, the hedge fund manager who brought the case, would likely be a waste of time anyway. Better just to exercise ones freedom and risk being asked to leave.

A similar situation exists over much of England. When Raynor Winn and her husband Moth became homeless and decided to walk the south west coastal path, a story she told in her best-selling book the Salt Path, they camped almost every night without asking permission from anyone. As with much land across the UK, in many cases it would be very difficult to know who to ask anyway. Despite the trepidation the couple occasionally felt, there was nothing criminal in what they did. They were exercising their freedom to camp. The feelings of trepidation they and others have felt in such circumstances comes from the uncertainty about whether one might be challenged.

While there are some landowners who may try to use the civil law of trespass to prevent people exercising their freedom to camp, many others donâ??t. This has resulted in what is known as an â??implied consentâ?• to camp in many places, such as the Lakeland fells. To suggest the public need to ask permission or wild camping is not allowed in such places is not just just wrong, it is effectively an attempt to erode or negate that freedom.

The confusion at the start of another well-meaning article (see here) was even worse:

â??Wild camping is legal on Dartmoor once more â?? but the short-lived ban has given the battle for better access to the outdoors a massive boostâ?•.

The removal of a statutory right does not create a ban, the freedom exists between the two. A few paragraphs on the article implicitly recognised this when it stated trespass â??is not a criminal offence under English lawâ?•.

The existence of a freedom to camp, however, does not mean that the right to camp which was created by the Dartmoor Commons Act was unimportant. On the contrary, it prevented landowners from trying to use the law of trespass â?? a complex and far from simple matter â?? to limit that freedom and gave people a sense of security. That right was well worth fighting for.

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The decision of the Appeal Court that wild camping should be considered as an outdoor recreational activity is also extremely significant politically. It puts wild camping at the centre of the debate about rights of access for purposes of outdoor recreation in England.

The law on wild camping in Scotland is weaker than is often thought

It is very positive that the Right to Roam campaign in England wants to base access rights there on the Scottish model, covering all land and water and a wide range of outdoor recreational activities including wild camping. This stance, which is attracting a wide range of support, marks a radical break with the approach taken by the disastrous Countryside and Rights of Way (CROW) Act 2000. This excluded vast swathes of England and also excluded camping (along with swimming, vessels, vehicles etc) from the activities that people had a right to enjoy on â??access landâ?•. Sadly, the Ramblers in England still appear wedded to the CROW approach and are not among the organisations supporting the right to roam campaign,, ironic given that the Ramblers in Scotland were at the forefront of the campaign for access rights here.

The Right to Roam campaign, however, need to be mindful of two weaknesses in the Scottish legislation which have served to limit access rights including the right to camp.

The first is that rights to camp are of limited use unless they are enforced. It is particularly important that signs such as that in the photo above, which misrepresent the law and suggest there is not a right to camp are removed immediately and action is taken against the landowner to prevent them harassing campers. Otherwise the general public is likely to be left with the impression that there is no right to camp in Scotland and their experience little different to what happens in England (with campers welcomed or tolerated in some places and harassed in others). The sign on Loch Morar is not an isolated issue but part of a systematic failure to enforce the right to camp which, on Loch Voil in the

Loch Lomond and Trossachs National Park, goes back 20 years (see here). Scotland may in theory have world class access rights but in practice they are often little better than the freedoms which exist in England.

The second weakness is that both the Land Reform (Scotland) Act and the National Parks (Scotland) Act introduced new powers to restrict access rights through the use of byelaws. If, following the Dartmoor judgement in the High Court, a person had gone to camp on the Darwallsâ?? land, the worst that could happen is they could have been asked to leave. If that same person, however, were to camp in one of the Loch Lomond and Trossachs National Park camping management zones without a permit, they would be committing a criminal offence.

Moreover, the risk of being caught in the Loch Lomond and Trossachs National Park is far higher as they have by far the largest ranger service in Scotland and for the last ten year its main focus has been on policing campers. The power of the state to prevent people from camping is far greater than any private landowner because it can both create laws which ban the activity and the deploy the resources necessary to enforce them. Balquhidder provides a perfect example. Private landowners may have put up no camping signs over twenty years ago but if people exercised their freedom in practice there was little the landowners could do. The camping byelaws along have made it far harder to camp on Loch Voil than it was prior to the Land Reform (Scotland) Act.

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What Scotland could learn from England

Following the High Court judgement on Dartmoor, the Right to Roam campaign responded by organising demonstrations, crowd funding to take the case to the court of appeal and significant political lobbying which prompted the Labour Party to say it supported extending the right to roam. Contrast that with the position in Scotland where even the most outrageous signs which deny the existence of access rights have no political consequences and court cases, such as the Drumlean judgement (see here), are lucky to attract a single observer let alone a demonstration.

The lesson from England is that until those who care about access rights start to campaign again, the long-standing failure of our access authorities to protect those rights effectively will continue, as will the introduction of new measures designed to restrict access. Its time to consider creating a right to roam campaign in Scotland that brings together activists and the recreational organisations that represent the public that was dedicated to protecting our access rights and ensuring they are enforced.

Category

1. Access rights

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