

PE1751/F

Parkswatchscotland submission of 11 November 2019

Following a request from the Petitions Committee for advice from Parkswatchscotland on Petition 1751 we have prepared the following summary of key issues. More detailed information is available in many posts on parkswatchscotland.co.uk, including the use of camping byelaws in the Loch Lomond and Trossachs National Park.

Our overall conclusion is that the issues that have arisen from activities such as camping and the use of camper vans and motorhomes in close proximity to the road network is best resolved through information, education and new infrastructure provision. This can be achieved through better coordination of the activities of public bodies. We recommend that to facilitate this a working group is set up, led by Transport Scotland and Scottish Natural Heritage, and a Ministerial directive is issued to Forestry and Land Scotland to make better provision on land which they own for the purpose of promoting camping and campervanning (the use of campervans and motorhomes). No new legislative action is required.

This petition seeks new legislation to enable local authorities to create no wild camp zones in Scotland. It includes the statement "currently there is no legislation that local authorities can utilise to allow them to prohibit wild camping". This statement is incorrect. All local and national park authorities already have powers under the Land Reform (Scotland) Act 2003 to prohibit or restrict camping. Sections 11 and 12 provide the power to suspend access rights or make byelaws to prohibit the exercise of access rights, including informal camping. **New legislation is therefore not needed as local authorities already have the powers to prohibit or limit camping in its various forms in any location where statutory access rights apply.** These rights only apply to non-motorised users, including pedestrians, cyclists and horse riders. Exceptions apply where access is required for persons with a disability that restricts their mobility. For motorised users the Road Traffic Acts and other legislation regulate the use of land close to roads by any vehicle, including campervans and motorhomes.

The way in which these existing powers have been developed by the UK and Scottish Parliaments has taken very careful consideration of **long standing democratic rights and freedoms to traverse land on foot, bicycle, horse and motorised vehicle.** These considerations include issues relating to the need to stop and rest as well as take access to surrounding land, as appropriate, in addition to safety and emergency requirements. The Road Traffic Act 1988 allows all vehicles to stop and pull off onto adjacent ground (up to 15 yards), providing no damage is done to fences, gates, walls etc. No traffic offence is created irrespective of whether the land is in public or private ownership, although the land owner may consider that the presence of the vehicle constitutes a trespass and may seek an interdict in the civil court to dissuade the vehicle owner from returning. The statutory right to camp

(informal camping, which includes “wild” camping) was established in the 2003 Act by the repeal of part of the Trespass (Scotland) Act 1865 which had created the offence of occupying or camping on land without the consent of the owner or occupier (see section 99 and Schedule 2, section 1 of the 2003 Act). The right to camp applies to all land where access rights are present, as provided for in the 2003 Act. These access rights are generally adjacent to most of the road network outside urban areas and also adjacent to most water bodies and shorelines, unless the ground is occupied by houses, gardens and other buildings.

Issues which have arisen which appear to concern the petitioner relate to various matters including litter, damage, offensive behaviour, alcohol consumption and disposal of human waste. These are all covered by other legislative provisions, many of which carry criminal sanctions. **The widespread prohibition of camping by tents, campervans etc., is not an appropriate solution when better enforcement of existing legislation is the preferred option.** Such enforcement would ensure that only those people deliberately causing damage or difficulty would face criminal sanctions, rather than a broad spectrum of the wider public who are trying to act responsibly and have minimum impact on the environment and other people. Operation Ironworks, a police led initiative, which was developed in the LLTNP from 2008 onwards provided a good basis for increased action to deal with criminal activity associated with roadside vehicular parking and other activities.

The introduction of camping byelaws in the LLTNP was supposed to be a temporary measure on the east shore of Loch Lomond while other measures were put in place. The Park Authority indicated that there was no intention of extending such byelaws to other locations. The original byelaws, however, remain in place and have been extended to other loch-side and roadside locations, along with camping permit arrangements, but with minimum infrastructure improvements. **Outdoor recreation interests consider these developments have not been a success.** They have encouraged displacement of problems to other locations, failed to deliver adequate infrastructure improvements and changed the role of the ranger service so that it has become excessively regulatory in function rather than educational. The extension of these byelaws was also severely criticised by those with experience of policing and ranger services. Byelaw and permit arrangements are costly to set up and administer and represent very poor value for money outcomes both within the byelaw area and further afield. **They should not be extended to other locations and should be terminated within the national park as soon as possible.**

The core of problems relating to informal camping, in all its forms, near to roadsides is the use of motorised vehicles combined with the absence or poor state of roadside facilities, notably laybys, parking areas, picnic sites, camping pitches, toilets, litter and waste disposal points. **The solution lies in better infrastructure related to the road network, improved information and educational effort directed towards**

visitors and increased action by Police Scotland to deal with criminal activity where it occurs. Many of these issues are also dealt with by other European countries. It is our experience that the infrastructure associated with the road network in these other countries is generally superior to the facilities available in Scotland, both in terms of informal and formal camping opportunities, parking arrangements for campervans and motorhomes and associated toilet facilities. **A better understanding of how such infrastructure can be delivered in Scotland is urgently needed.**

A proposal to ban camping near roadsides throughout Scotland was considered by the Scottish Government's Land Reform Review Group, but was not supported in its final recommendations which were made in 2015. The overall conclusion of the LRRG was that the 2003 access legislation was working well, did not need any modifications, and the "main challenges involve continuing improvements in implementation". These included further promotion of the Scottish Outdoor Access Code combined with better implementation on the ground and the need to take account of the concerns of both land managers and access users. Camping near roadsides has also been given detailed consideration by the National Access Forum which published guidance in 2008, updated in 2016, with the support of SNH Under the title "Managing informal camping under the Land Reform (Scotland) Act 2003" this is described as guidance "for those managing issues relating to informal camping, particularly in accessible roadside settings". **Neither the NAF nor SNH have at any stage recommended a Scotland wide roadside camping ban or the need for additional powers for local authorities to establish "no wild camp zones"**. The NAF/SNH guidance on the management of informal camping needs to be better understood and given further promotion, alongside the SOAC. The guidance includes an outline of all relevant legislation relating to activities that could be regarded as criminal and provides advice on how to seek police assistance in such situations. Reference is also made to byelaws, but the only example given is the use of byelaws to control the consumption of alcohol in public places. This has been used in the LLTNP alongside camping byelaws and other measures, making it impossible to determine which measure(s) were the most effective in reducing or displacing impacts. The NAF have shown no interest in promoting camping byelaws, probably because of the practical difficulties associated with permit systems and the reputational risk associated with such a statutory limitation which would, in effect, be returning Scotland to the trespass situation of 1865, at least for land close to roads.

The petition has identified a number of issues which are of concern as visitor promotion has helped to bring many more people into the Scottish countryside, often using motorised transport **These concerns might be best addressed by some form of joint working group set up by Transport Scotland and SNH, with appropriate stakeholder participation by the NAF, and others.** The primary purpose of such a group should be to identify what improvements to roadside

infrastructure are required and how these might be funded, from both the public and private sectors. Some input from PS would also be helpful to identify what measures they can take to increase compliance with existing criminal law. **The Petitions Committee may wish to recommend the setting up of such a joint working group led by TS and SNH.** In addition FLS could play a major role, as a public body owning extensive tracts of Scotland, in providing parking and camping infrastructure on land adjacent to public roads as well as demonstrating best practice to other land managers. It should be noted that the LRRG, when considering the need for adequate resources to improve the implementation of the SOAC, said that “Scottish Ministers might give clearer direction across government and associated public bodies to ensure that they play their part as appropriate in the promotion and delivery of responsible public access”. Such a direction would be particularly appropriate in the case of FLS, as a new (as of April 2019) fully devolved public body which owns more land than any other Scottish public body, most of it in locations desirable for camping and campervanning. **The Petitions Committee may wish to encourage Scottish Ministers to issue a direction to FLS which requires the appropriate allocation of resources by this public body to help meet the concerns raised by the petitioner. Beyond these two recommendations as regards a working group and FLS direction, it is suggested that no further action by the Scottish Parliament is required in response to this petition.**

Note on Authors.

Both Nick Kempe, then President of the Mountaineering Council of Scotland (now Mountaineering Scotland), and Dave Morris, former Director of Ramblers Scotland were involved in the negotiations which led to Scotland’s world class access legislation and Dave worked closely with MSPs from all parties to help its passage through the Scottish Parliament.

Nick set up the Parkswatchscotland blog after repeated and unsuccessful attempts to persuade the Loch Lomond and Trossachs National Park Authority and the Scottish Government to change course and it now covers a wide range of issues relating to the two National Parks. Dave Morris is a regular contributor

Bob Reid was also a President of the MCofS during the development of the access legislation. He is a senior planner who has worked in the public and private sector and was the first chairman of the National Access Forum, a member of the Land Reform Review Group and former Convenor, Royal Town Planning Institute Scotland.