



The Loch Lomond Byelaw Review 2023

Agenda Item 3

National Park Authority Special Board Meeting

Monday 18th July 2022

Paper for Decision

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1. Purpose

- 1.1. This paper outlines the purpose of the Loch Lomond Byelaws, the statutory context for a review, the work undertaken to date and the draft proposals for change.
- 1.2. Appendix 1 accompanies the paper and demonstrates the draft consultation document recommended for the required 12-week statutory public consultation to ensure the review is as considered as possible.

2. Recommendation(s)

- 2.1. The Board are asked to approve:

- the attached consultation documentation and the proposed amendments to the Loch Lomond Byelaws contained therein
- that a 12-week statutory public consultation on these proposals is undertaken commencing 27th July, 2022
- the overall proposed timeline for the completion of the review and submission of finalised proposals to Scottish Ministers by March 2023
- that officers may undertake further minor editorial amendments to the document prior to publication.

3. Contribution to National Park Partnership Plan and/or Our 5-year Plan

3.1. The requirement to review the Loch Lomond Byelaws is a statutory responsibility, however the process and objectives of the exercise link into two key priorities within our current National Park Partnership Plan:

- Conservation Priority 2.1 - Landscape & Heritage; The National Park Authority, and its partners, will work to conserve and enhance the special landscape and cultural heritage qualities of the area.
- Visitor Experience Priority 8.1 - Visitor Management; ensuring locations experiencing recreational pressures are well managed with the appropriate combination of infrastructure investment, education, and regulation.

4. An introduction to the Loch Lomond Byelaws

4.1. The Loch Lomond Byelaws were initially introduced in 1996 as a mechanism to manage recreational activity, to assist in balancing environmental, economic, and social interests on the loch and to ensure that it is enjoyed safely and responsibly by all users.

4.2. Loch Lomond is the largest body of freshwater in mainland Britain and an iconic place due to its range of special environmental qualities including Sites of Special Scientific Interest (SSSI), Special Areas for Conservation (SAC), and Special Protection Areas (SPA).

4.3. Large numbers of people enjoy many types of recreation activities on and around the Loch all year round and many businesses and communities also benefit from the opportunities that Loch Lomond offers.

4.4. Byelaws are in place on Loch Lomond, and not on other lochs in the National Park, because of these specific characteristics, and to help manage the careful balance between these multiple uses and opportunities.

4.5. Loch Lomond & The Trossachs National Park Authority became responsible for implementing these Byelaws when it came into being in 2002. Since then, they

have undergone two reviews - in 2007 and 2013 - and a third review is due to be completed by March 2023.

4.6. Paragraph 8 of Schedule 2 of the National Parks (Scotland) Act 2000 (“**2000 Act**”) provides for the Park Authority’s powers to make byelaws, for the purposes of:

- 1) *protecting the natural and cultural heritage of the National Park,*
- 2) *preventing damage to the land or anything in, on or under it,*
- 3) *securing the public’s enjoyment of, and safety in, the National Park*

4.7. In particular, a National Park authority may make byelaws:

- 1) *to regulate or prohibit the lighting of fires,*
- 2) *to prohibit the depositing of rubbish and the leaving of litter,*
- 3) *for the prevention or suppression of nuisances,*
- 4) *to regulate the use of vehicles (other than the use of vehicles on a road within the meaning of the Roads (Scotland) Act 1984 (c.50)),*
- 5) *to regulate the exercise of recreational activities.*

4.8. The National Park Authority has a duty to review the byelaws in line with the Local Government (Scotland) Act 1973 and the Civic Government Act (Scotland) 1982. This means that a National Park Authority needs to review byelaws at intervals of not more than 10 years and in the case of the Loch Lomond Byelaws 2013, no later than the 31st March 2023.

4.9. The review is completed when the final proposed byelaws have been submitted to Scottish Government Ministers. This means that the implementation date of any proposed changes to the byelaws can come into effect after the 31st March 2023, subject to the direction and approval of Scottish Government Ministers. If a review has been completed, the existing byelaws can remain active until such date as Scottish Ministers decide that changes to the byelaws should come into force.

4.10. At this stage, the main focus is completing the byelaw review within the prescribed timeframe and no specific implementation date has yet been proposed. Should Scottish Ministers be minded to approve the proposed changes, then sufficient time will be required to ensure the following preparations can be made:

- Communicating the changes to loch users to ensure that any new byelaws and procedures are fully understood in advance,

- Implementing any new physical measures (signage, marker buoys, etc) and operating procedures (including staff training) required to enforce the byelaws.

4.11. This review, while mandatory, is also timely due to observed changes in the way that the loch is used for recreation in recent years with an increase in non-powered activities such as open water swimming and stand up paddle boarding. In addition, in the last two years there has been a marked upturn in Personal Water Craft using the loch.

5. What has changed on Loch Lomond?

5.1. There have been significant changes in the type and volume of recreation activities enjoyed on Loch Lomond since the byelaws were last reviewed, particularly in recent years.

5.2. More and more people are enjoying non-powered activities such as swimming, paddle boarding and kayaking as well as spending time by the water, even if not taking part in a specific activity (*10% increase nationally in non-powered, water-related activities and 14% increase in people visiting lochs – NatureScot*). This national trend is generally felt by staff and stakeholders to be even higher on Loch Lomond.

5.3. At the same time, the volume of motorised craft on the loch has also increased, with personal water craft (PWCs) becoming the most popular type of craft on the loch (*13% increase in registrations in all powered craft 2019-2021, 38% increase in registrations of personal water craft 2019-2021*).

5.4. While more people enjoying the loch responsibly is a positive, these trends also increase the potential for conflict between the ways different users want to use Loch Lomond. At times this has led to incidences of disturbance, antisocial behaviour and increased risks to different users.

5.5. The number of contraventions of the byelaws has also significantly increased in recent years. There was a 119% increase in total contraventions 2019-2021. The highest number of contraventions (44%) were for speeding in lower speed limit zones. The majority of these are concentrated into certain areas of the loch where National Park staff and stakeholders have seen increases in other activities, particularly non-motorised recreation.

5.6. The National Park Authority receives complaints from members of the public about the conduct of others via direct contact with our Ranger Service and via our public mailboxes. These can be a useful indicator of trends in behaviours, particularly when viewed beside the complaints escalated to through our official complaints procedure and contravention data.

5.7. From 223 frontline complaints recorded between April 2016 – May 2022 linked to irresponsible vessel use on the loch, many were concentrated around busy

locations which have good access and facilities, such as Luss (31%), Duck Bay area (12%), Milarrochy (9%), and Balloch (8%).

- 5.8. 58% of the 223 complaints related to PWC behaviour. This is seen most acutely at Luss where 64% of frontline complaints related to irresponsible behaviours by PWCs.
- 5.9. Similarly, 83% of complaints escalated to our official complaints procedure were in relation to PWCs and motorised vessels, with irresponsible use of PWCs, noise and speeding being three most common types of complaint. 28% of all escalated complaints were in the Luss area, with 26% in the Balloch and Duck Bay areas.
- 5.10. While these trends reflect a change in uses and behaviours, they could also be seen to indicate that the scope of the existing byelaws may not be providing a strong enough deterrent to the minority of loch users who are unreceptive to general responsible enjoyment messages and whose behaviour has the potential to endanger other loch users.
- 5.11. It is considered vital that this byelaw review responds to these new trends and heightened safety concerns to better manage behaviours of concern taking place on the loch and support healthy and safe enjoyment of Loch Lomond
- 5.12. The experience of the National Park Authority, along with insights from partners and key stakeholder groups, have been used to inform changes to the byelaws now being proposed for consultation. There is a clear need to focus on increasing safety on the Loch and on byelaw changes that could help reduce the risk of serious incidents occurring. In particular, some of the proposed changes aim to create clear rules for defined areas, focusing on the busiest parts of the Loch to avoid accidental violations, provide deterrents and to enable efficient enforcement processes to reduce deliberate contraventions and dangerous behaviours.

6. Impact on nature and climate

- 6.1. The impacts of the twin global crises of nature loss and climate change are already being felt across the National Park.
- 6.2. The National Park Authority has set ambitious targets for restoring nature and achieving net zero emissions as an organisation and will be stepping up work on nature and climate even further over the coming years.
- 6.3. These ambitions will be explored and consulted on in more detail as part of the overarching strategic plan for the whole National Park, the National Park Partnership Plan, which is being developed later this year and will be consulted on in 2023.

- 6.4. The Loch Lomond Byelaws along with a range of other existing legislation and designations will continue to play a part in helping to manage impacts on nature and climate on the loch.
- 6.5. The Project team has engaged with a wide range of expertise within the review process to date and it is considered that the existing provisions within the byelaws have to date provided adequate and efficient environmental protection for important species and habitats in tandem with other forms of regulation and management.
- 6.6. The Loch Lomond Byelaw review does provide an opportunity to begin discussions with key stakeholders on how to better monitor and manage environmental impacts on Loch Lomond. There is a need to consider what additional data needs to be gathered to monitor environmental trends on Loch Lomond (and other lochs and rivers) which may point to further management measures in the future. If monitoring this data highlights new issues, the National Park Authority can/may choose to carry out a further review of the byelaws in the coming years if this is deemed appropriate.

7. Developing the review

- 7.1. During 2021 an internal project team was set up to begin the process of reviewing the Loch Lomond Byelaws by considering the changes we have seen on the loch in recent years and assessing the suitability of the current byelaws. Through this process, and with input from stakeholders, we have identified and refined a number of outcomes that this review aims to achieve:
 - 1) Safer enjoyment of the water for all loch users and especially young people;
 - 2) Protecting the environment;
 - 3) Increased participation in healthy recreation by making space for all users and types of activities;
 - 4) Minimising incidents of antisocial behaviour and disturbance to communities and loch users
 - 5) Appropriate management and enforcement of the byelaws.
- 7.2. Officers have continuously assessed the issues being faced on Loch Lomond that have the potential to be addressed in part by amendments or changes to the current byelaws and associated procedures. These assessments are based on the experience of staff responsible for managing the existing byelaws drawing on data held and working with legal experts and other specialist staff as required.
- 7.3. This initial analysis identified seven key issues in addition to several minor technical procedural issues (see Other Changes to the Byelaws).

8. Key issues to address

8.1. To help achieve the outcomes set out above, the following key issues have been identified to be addressed by the byelaw review:

- 1) Irresponsible use or antisocial behaviour by some Personal Watercraft users
- 2) Disturbance to communities and other loch users
- 3) Powered vessels traveling at speed close to shore
- 4) The risk of fatalities due to cold water shock
- 5) Young people in sole charge of powered vessels
- 6) Challenges identifying individuals leading to difficulty progressing enforcement cases
- 7) Unnecessary duplication with existing legislation regulating business practices on the loch

8.2. After identifying these issues, several draft proposals (with associated byelaw changes and amendments) were developed. When considering the proposals six principles were applied to each of them to test their viability. These tests included:

- **Proportionality:** the balance of a restriction imposed by a corrective measure and the severity of the nature of the prohibited act,
- **Evidence base:** the availability of sufficient data and human experience,
- **Enforceability:** the capability of a proposal and associated byelaws to be enforced,
- **Practicability:** the capability of the National Park Authority to resource the management of any proposed changes,
- **Impact:** ensuring that proposals will not only address an issue sufficiently to justify changes but do not themselves cause additional issues,
- **Alternatives:** ensuring that there are not other ways of addressing these issues that are more suitable than the legal recourse such as educational campaigns or infrastructure improvements.

These principles were applied to sift potential byelaw changes into a set of proposals deemed practical to take forward to wider consultation.

An initial informal stage of engagement allowed these ideas and proposals to be explored with stakeholders to help refine what is now being recommended to Board members as a basis for public consultation.

Over 50 stakeholders/groups were engaged in this pre-consultation phase, including:

- Local recreation groups
- Businesses and land/riparian owners
- Lochside Community Councils
- Emergency services
- National recreation groups
- Environmental organisations
- Local Authorities

8.3. This engagement included holding five dedicated workshops, numerous one-on-one discussions and sharing a Stakeholder Discussion Pack made up of:

- An explanation of the reason for the Loch Lomond Byelaws,
- An explanation of the Byelaw Review process
- Aims of the Byelaw Review
- Key issues to address
- Other considerations that were thought to be unsuitable for taking forward
- Next steps of the Byelaw Review, including how input from stakeholders would be used to influence the proposals and a timeline of the entire process.

8.4. Additional sessions were held with National Park Authority Board representatives to further explore alignment with Future Nature and Mission Zero objectives, and our National Park Youth Committee to explore their views on the proposals.

8.5. From the five workshop sessions and additional stakeholder correspondence, comments were captured and sorted by:

- Stakeholder Group
- Whether comments were:
 - Supportive / Neutral
 - In opposition
 - Offering alternative recommendations
- Other considerations not covered by the main proposals

8.6. These discussions offered useful insights and clarity on some considerations and generally aired a broad range of views that gave officers confidence that no major alterations were needed to the proposals ahead of the public consultation, and that some of the more detailed comments could be discussed during the public consultation and assessed in line with the analysis of that process.

8.7. From this engagement the following proposals and the associated byelaw changes are recommended to be taken forward to public consultation.

- **Proposal 1 – Introduce Low Powered Activity Zones**
- **Proposal 2 - Realignment of the current 11kph boundary to the south of the island of Inchmoan.**
- **Proposal 3 - Compulsory wearing of Personal Flotation Devices (PFD) for young people on all vessels when on an open deck**
- **Proposal 4 - Transfer liability for offences committed by young persons in sole charge of powered vessels to the Owner or Registered Owner of the vessel**
- **Proposal 5 - Introduce a Loch User Registration Scheme**
- **Proposal 6 - Amend the existing Permission to Trade byelaw to solely deal with business practices causing nuisance on the loch and its surroundings**

9. Understanding the proposals

9.1. The draft consultation document (Appendix 1) sets out fully the six significant proposals for change which we recommend for public consultation at this time. The rationale behind each proposal is explained within this appendix, alongside data which supports the need for action, the precise detail of the changes proposed, and which objectives would be secured either by the individual change or in combination with others proposed.

9.2. Proposal 1 involves the creation of low powered activity zones at the busiest locations on the loch where many activities are increasingly concentrated into a limited area. This proposal would create distinct and obvious areas where vessels over 15hp (11.2kw) and capable of higher speeds are excluded so that conflicts between non-motorised recreation and high-powered craft are minimised and all users have a clear understanding of where they can best enjoy their activity safely and with consideration of other loch users. This change would also bring a clarity to these areas which supports more straightforward enforcement, and therefore a stronger deterrent to anyone considering behaving in an irresponsible or reckless manner. This is much more straightforward than the alternative of gathering evidence to record the speed of vessels who may be breaking existing speed limit byelaws. A number of areas popular for non-powered activities, but which have seen less incidents/complaints, have also been included where there is considered to be a risk of displacement of powered craft activity to them.

9.3. Proposal 2 involves an amendment to the existing 11kph speed limited area using more obvious and discernible geographic markers at this location to help understanding of where that zone starts and ends while out on the loch.

9.4. Proposal 3 suggests a change where all young people under the age of 16 years would be required to wear lifejackets (PFDs) when enjoying the loch on

motorised or non-motorised craft. With the exception of being on a personal watercraft, the existing byelaw only states that lifejackets should be carried on board.

- 9.5. Proposal 4 would see the liability for an offence which a young person in sole charge of a powered vessel commits being transferred to the adult owner/registered owner of that vessel for the purposes of enforcement.
- 9.6. Proposal 5 would see the introduction of a new Loch User Registration Scheme. This proposal, in tandem with Proposal 1, would create more credible deterrents to irresponsible and unacceptable behaviours and work towards improved behaviours and more efficient enforcement on the loch when required. This would ensure that all users of powered craft are easily identifiable, not just the registered owners as is currently the case. This proposal would also offer improved communication between the National Park Authority and loch users, not just the registered owners of craft and would facilitate the use of more proportionate fixed penalty fines for certain byelaw offences, if introduced in the future.
- 9.7. Proposal 6 addresses an inefficiency within the existing byelaw around trading permissions for businesses. It creates a clearer and simpler system in tandem with parallel regulation such as planning and licencing. This change will reduce bureaucracy for responsible businesses whilst retaining controls around businesses which are acting irresponsibly and inappropriately.

10. Other matters considered

- 10.1. During the Byelaw Review process to date, a range of other potential proposals have also been explored by the National Park Authority and in discussion with stakeholders. These include:
 - Requirement for insurance;
 - Requirements for minimum levels of training and certification for someone in charge of a powered vessel;
 - Requirement for landowner permission to launch power-driven vessels;
 - A ban on the use of PWCs;
 - The introduction of measures to reduce harmful impacts of wake;
 - Compulsory swim floats for open water swimmers;
 - Introduce 'safe swimming' zones;
 - Camping restrictions on the islands;
 - Undertaking a staged approach to decarbonising Loch Lomond to net zero which would eventually see the phasing out of fossil fuel power driven vessels;
 - Waiving launch fees for electric vessels;
 - Installing charging points for electric vessels.
- 10.2. A number of these have not been included within the current review proposals either because there was insufficient evidence to justify changes, or there was

no significant body of opinion advocating for a specific change. Some of these issues are also not specific to Loch Lomond and require a national response to address them (e.g. requirement to be insured, qualifications, phasing out of fossil fuel craft etc).

10.3. Climate related issues are being considered more widely for the National Park as part of the development of the next National Park Partnership Plan. However, these issues and proposals can still be discussed and considered further during, and after, the public consultation.

10.4. One proposal that could not be taken forward due to the limitations of the legislation associated with creating byelaws is to use alternative disposal methods for dealing with more straightforward byelaw contraventions.

Currently, if an alleged byelaw contravention is assessed to be worthy of charging an individual, the only way to do this is to report the case directly to the Crown Office, which can result in a defendant gaining a criminal record if they are found guilty. An alternative to this would be to introduce disposal methods such as Fixed Penalty Notices, which are currently available to designated National Park staff for offences such as littering under the Environmental Protection Act.

Having this type of alternative for more straightforward byelaw breaches could assist with both the efficiency and the proportionality of enforcing the byelaws.

Initial discussions with stakeholders suggested there would be general support for this concept. However, this power can only be conferred through national legislative instruments. This may be explored further following the completion of this review.

11. Other changes to the Loch Lomond Byelaws

11.1. As well as the six key proposed changes to the byelaws outlined above, several other minor byelaw changes and amendments are being put forward as part of this review.

11.2. These include new byelaws, amendments to some definitions, removal of some definitions, amendments to existing byelaws and removal of some existing byelaws.

11.3. These changes are to ensure the byelaws are clear, consistent and both easier to follow and to implement. Details of these proposed changes can be found in the full table of proposed changes to the byelaws (**Appendix 2**) and the set of the proposed byelaws to take to public consultation (**Appendix 3**).

12. The public consultation and ongoing engagement

- 12.1. If approved, the public consultation will run for 12 weeks from Wednesday 27th July – Wednesday 19th October 2022. The consultation document **(Appendix 1)** will be made available on the National Park Authority website and in hard copy on request at the following locations:
- National Park Authority HQ, Balloch
 - Duncan Mills Memorial Slipway
 - Balmaha Visitor Centre
 - National Park Office, Callander
 - Further locations to be confirmed
- 12.2. Responses to the consultation will be collected via an online survey found at the National Park Authority website. Paper copies of this survey will also be available at the locations listed above.
- 12.3. The consultation will be advertised through local newspapers, the National Park Authority website, social media channels and through direct contact with stakeholders.
- 12.4. The public consultation exercise has been fully accessed through an Equalities Impact Assessment to ensure that all audiences are able to engage in the consultation and no one is excluded from the process.
- 12.5. The results of the consultation will be analysed by an independent external contractor and collated in a report to inform any changes to the proposed draft byelaws before they are presented to the National Park Authority Board and subsequently Scottish Government Ministers for approval.
- 12.6. In addition to the public consultation, and following the initial pre-consultation engagement with a wide variety of stakeholders, the National Park Authority will be forming an external steering group with representatives from various stakeholder groups to help us consider issues relating to the Loch Lomond Byelaws, visitor management issues on the loch and how the loch can better support Scotland's climate and nature ambitions. The stakeholder group will:
- Provide feedback and advice to the National Park Authority on the topics listed above during this review and beyond;
 - Provide guidance to the Loch Lomond Byelaw Review project team during the formal consultation process;
 - Input experience and expertise to help refine and finalise the proposed changes to the byelaws that will be submitted to Scottish Ministers following the consultation;
 - Provide guidance and advice to the National Park Authority when preparing for implementation of any changes to the Loch Lomond Byelaws;
 - Feed into discussions on the development of other National Park strategic plans and initiatives where necessary;

- Discuss climate and nature ambitions for the loch to feed into wider strategic planning;
- Act as representatives for their area of expertise in each of these discussions.

13. Next steps following public consultation

- 13.1. Once the formal consultation is closed, the project team will be refining the proposals and core review elements based on analysis of the consultation responses. A draft of the Loch Lomond Byelaws 2023 will then be presented to the Board for approval in January 2023.
- 13.2. Subject to Board approval, the proposed byelaws will be published online and made available at National Park Authority Offices for a period of one month before they are submitted to Scottish Ministers for comment and approval.
- 13.3. Beyond April 2023, officers will continue to work with Scottish Government towards securing final approval of the new byelaws and proposing an implementation date. During this time, we will continue to liaise with key stakeholders to ensure loch users are fully aware of any changes before the new byelaws are implemented. We will undertake any physical and procedural measures, such as the installation of buoys for example, required to implement the new byelaws and ensure staff are adequately trained. The scope of this work will determine what the appropriate date for the new byelaws coming into force should be.

14. Conclusions

- 14.1. This paper and the accompanying appendices outline the analysis and consideration which have led officers to conclude on the proposals for changes to the Loch Lomond Byelaws recommended for the purposes of consultation. This has been drawn from the experiences of our staff operating the existing byelaws, the data we have and the informal engagement to date with stakeholders.
- 14.2. While this review is mandatory as we approach the statutory 10-year time limit, it has arrived at an opportune time where we have seen some significant change in the composition of registered craft, loch use and in behaviours of concern. In the knowledge of these changes and the apparent heightened risks to the safety of loch users, it is vital that the National Park Authority considers how best to ensure Loch Lomond can be enjoyed safely by all visitors while protecting its very special environment.
- 14.3. The informal stakeholder engagement undertaken to date has revealed general consensus across the core issues that the byelaw review needs to

address and pragmatic solutions. However, given that the wide range of user groups all have their own interests and priorities it is unrealistic to expect that all will agree on the specifics of the proposals we are proposing to consult on. The forthcoming 12-week public consultation will provide an important sounding board for the proposals but also help us gather more valuable insights to help make improvements. It is also likely to bring forward consultation responses advocating more radical approaches and the Board will have to consider all views as part of finalising the byelaw changes before submitting them to Scottish Ministers for approval by March 2023.

14.4. The proposals presented in this report draw on the in-depth experience of our staff who operate the current byelaws and are observing behaviours on Loch Lomond, the rich data we have on craft numbers, complaints and byelaw breaches and the insights of various loch user groups and stakeholders. The proposed changes are considered to be proportionate, balanced and critically have the potential to make the loch a safer and more enjoyable experience for all visitors and users.

14.5. The draft consultation document attached to this report and the consultation process ahead are designed to be as inclusive and informative as possible. We have endeavoured to present complex data and experience in a digestible and accessible format to help illicit informed and engaged responses across the key issues we are seeking to address. In addition, the creation of a stakeholder group to operate throughout the process until newly approved byelaws are implemented will be invaluable in building consensus and in supporting our work to communicate the changes that follow a final Ministerial approval. Board members are therefore asked to approve the recommendations in this report and in particular to approve that the proposed draft byelaw changes are taken forward to a formal 12-week consultation commencing 27th July.

15. Appendices

15.1. Appendix 1 – Draft consultation document

15.2. Appendix 2 – Table of changes to the Loch Lomond Byelaws

15.3. Appendix 3 – Proposed Loch Lomond Byelaws in full

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