

## Local government

### Guidance notes: Arrangements for confirmation of local authority byelaws

Following the general election on 7 June 2001, responsibility for the confirmation of certain byelaws was transferred from the Home Secretary to the Secretary of State for Transport, Local Government and the Regions. These responsibilities were later transferred to the Office of the Deputy Prime Minister in May 2002, and subsequently Communities and Local Government in May 2006.

### About this guidance

This Guidance page (updated May 2007) replaces the Home Office Circular 25/1996: *Arrangements for Confirmation of Local Authority Byelaws*, and sets out the arrangements for the processing of those byelaws for which the Secretary of State for Communities and Local Government is the confirming authority.

### Deciding how to apply to have byelaws confirmed

1. A byelaw is a local law which is made by a statutory body, such as a local authority, under an enabling power established by an Act of Parliament. If there is general legislation to cover the subject causing concern, byelaws are not generally considered suitable. Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by a Secretary of State.
2. The chart at Annex 1 sets out the procedure for establishing whether byelaws
  - are likely to be appropriate, and
  - are ones for which the Secretary of State is the confirming authority.
3. Communities and Local Government currently has seven sets of model byelaws which set out an appropriate wording for byelaws on a number of different subjects. We may add to or amend these in the light of experience, demand and changing circumstances.
4. Councils should note that, in a number of the sets, some of the individual model byelaws are optional and only those which are needed should be adopted. For example, if making byelaws using model set 2 (Pleasure Grounds, Public Walks and Open Spaces), do not include byelaws to restrict horses if there is no experience of them ever entering the park, nor restrict fishing if there is no water.
5. Once a Council has established that the issue to be addressed is dealt with by a model, the Council should locate a copy of the relevant set from the local government section of the Communities and Local Government website at [Local government legislation: byelaws](#), and adapt it according to their needs using the guidance notes that accompany the set.
6. Care should be taken to ensure that no changes are made to the wording of the model byelaws to be adopted. Where a Council wishes to vary a model or to make byelaws on an issue not covered by an available model, Part B of the application for provisional approval should also be completed.

7. In all cases, the draft byelaws and the completed application form for provisional approval, should be submitted together to the Communities and Local Government Byelaws Section. Only when provisional approval has been given should the Council make, seal and advertise the byelaws.

8. Councils should also note that where there is a substantive error in byelaws that have been sealed and advertised, the byelaws cannot simply be amended either by the Council or by Communities and Local Government. They must be made, sealed and advertised again. It is therefore important that the byelaws are checked in detail before sealing. (Very minor typographical errors may, however, be corrected by a Council officer if the corrections carry a clear official mark.)

## Purpose of an application form

9. The proforma application for provisional approval, which must be completed in respect of every byelaw application, serves two purposes.

10. The first is to assist Councils by providing them with an aide memoire of the issues that need to be addressed. The second is to help Communities and Local Government by providing confirmation that attention has been given to those issues.

## Level of scrutiny by Communities and Local Government

11. As a general principle, it is for the local authority to decide the necessary and appropriate byelaws for its area. Provided there is no legal problem and no conflict with general Government policy, we shall not oppose or query a byelaw simply because our judgement of what is necessary or appropriate differs from the Council's. Nor shall we oppose or query aspects of byelaws which relate to purely local concerns, such as the precise areas to which they will apply.

12. We shall assume that the wording of any byelaws has been checked and is deliberate: this assumption will apply to any omissions or inclusions and any statement of areas to which the byelaws will extend. Unless an apparent error has legal implications or affects a point of principle, we shall not take it up with the council.

13. We shall continue to expect Councils to consult with any interested parties and address their concerns as far as possible. Any objections we receive, as a result of the advertisement of the byelaws, will be sent to the Council for its comments.

14. We shall also continue to expect that byelaws are certain in their terms and not unreasonable in the legal sense. Only the courts, however, can give a definitive ruling. We shall therefore, not enter into discussions of these issues in particular cases but raise with Councils only those byelaws which clearly fail to meet the requirements.

15. In considering an application, the points on which Communities and Local Government will concentrate are as follows:

- that the byelaws are *intra vires* the relevant legislation and that any action required by the legislation, such as consultation with a named public body, has been taken;

- that they do not duplicate or conflict with the general law, existing byelaws or any local Act, or common law;
- that the nuisance they address merits criminal sanctions and that, to a reasonable person, the penalty available is proportionate;
- that they directly address a genuine and specific local problem and do not attempt to deal in general terms with essentially national issues;
- that they do not conflict with Government policy.

16. Byelaws which exactly follow a model will in most cases meet these criteria. For other byelaws, we will look to Councils to provide answers on these points.

## Making the byelaws

17. When the council has formally resolved to adopt any byelaws, they should be made under the common seal of the authority <sup>[1]</sup> and should be placed after any schedule or plan included in the byelaws. The document should also be signed and dated.

18. Where the byelaws are made by a parish or community council not having a seal, they should be made under the hands and seals of two members of the council. In this case, a suitable subscription to the byelaws would be:-

*Given under our hands and seals this ..... day of .....*

*(Signed) ..... (Seal)*

*(Signed) ..... (Seal)*

*Members of the ..... Parish/Town Council.*

19. If members of the parish or town council who sign the byelaws do not possess personal seals, the imprint of a signet ring, coin or thumb will suffice. Sealing wax and parchment seals may be obtained from legal stationers.

20. In order to provide sufficient room for the official signature of the Secretary of State, at least 15 centimetres (6 inches) of space should be left after the council's seal.

## Advertising the byelaws and holding them on deposit

21. After the byelaws have been sealed, a notice of the council's intention to apply for their confirmation must be given in one or more newspapers circulating in the area to which the byelaws are to apply<sup>[2]</sup>.

22. The usual wording for the newspaper notice is shown below.

**COUNTY/DISTRICT/PARISH/TOWN OF .....**

**CONFIRMATION OF BYELAWS**

*Notice is hereby given that the County/District/Parish/Town Council of ..... intends after the*

*expiry of the period mentioned below to apply to the Secretary of State for confirmation of byelaws made by the Council [insert here a brief description of the byelaws].*

*Copies of the byelaws will be kept at the offices of the Council at ..... and will be open to inspection without payment on any weekday during the usual office hours for one calendar month from and after the date of the [first] publication of this notice. Copies of the byelaws will also be supplied on receipt of an application accompanied by a fee of ..... for each copy.*

*Any objection to the application for the confirmation of the byelaws may be made by letter addressed to Mark Coram, Communities and Local Government Byelaws Section, 3/J5 Eland House, Bressenden Place, London SW1E 5DU or email [byelaws@communities.gsi.gov.uk](mailto:byelaws@communities.gsi.gov.uk) (no later than one week after the closing date for inspection) before the byelaws are confirmed.*

*(Signed) ..... Proper Officer of the Council*

*(Dated) .....*

23. For at least one month after the date of the publication of the newspaper(s), a copy of the byelaws must be held on deposit at the offices of the council for inspection by the public at all reasonable hours [3].

24. The period of deposit cannot begin until the byelaws have been brought into existence by being sealed. To avoid confusion, councils are advised to ensure that the byelaws are advertised **after** they have been sealed.

25. The council must provide any person who applies with a copy of the byelaws or with a copy of any part of the byelaws<sup>[4]</sup>. A fee of not more than 10 pence should be charged for every 100 words contained in any copy supplied.

## Applying for confirmation of the byelaws

26. Application to Communities and Local Government for confirmation should not be made until the month of deposit has expired. The application and sealed byelaws in duplicate (or in triplicate in the case of byelaws for the seashore requiring the consent of the Secretary of State for Transport) should be sent to Mark Coram, Communities and Local Government, Byelaws Section, 3/J5 Eland House, Bressenden Place, London SW1E 5DU.

27. The application should state that a copy of the sealed byelaws as forwarded, has been deposited for inspection for a full calendar month since publication of the newspaper(s). A copy of the newspaper(s) or a photocopy of the full page advertising the byelaw should also be enclosed.

28. On receipt of the sealed byelaws, provided that no objections have been received, they will normally be confirmed and returned to you as soon as possible. Where objections have been received, copies may be forwarded to you for the council's comments before a decision is taken.

29. In contentious cases, particularly those where the arguments are finely balanced, it is open to the Secretary of State<sup>[5]</sup> to order a public inquiry to be held. Such inquiries are rare and, in the normal course, the Secretary of State would hope that the issues - and any scope for compromise - might be

determined locally between the council and objectors.

## Date of operation of the byelaws

30. When he confirms byelaws, the Secretary of State may<sup>[6]</sup> fix the date upon which they are to come into force. The date will normally be one month from the point of confirmation, unless there are special circumstances which make an earlier date desirable. If this is the case, a request and reasons should accompany your application.

## Further information

31. Sealed byelaws or any queries on this guidance should be sent by post to the Byelaws Section, 5/G10 Eland House, Bressenden Place, London SW1E 5DU or any other byelaws related matter should be sent by email to [byelaws@communities.gsi.gov.uk](mailto:byelaws@communities.gsi.gov.uk).

Sections of Local Government Act 1972: <sup>1</sup> 236(3); <sup>2</sup> 236(4); <sup>3</sup> 236(5); <sup>4</sup> 236(6); <sup>5</sup> 250; <sup>6</sup> 236(7)

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  - [Annex 2 - Powers under which Local Authorities may make byelaws for which DCLG is the confirming authority](#)
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## Local government

### Annex 1: Procedure for determining whether to apply for Byelaws

1. Is the Byelaw listed as one which the Secretary of State will not normally confirm?

**Yes** - seek further advice from your legal department

**No** - see 2.

2. Is the Secretary of State the confirming authority for the legislation under which the byelaw is made?

See Annex 2 (right)

**No** - seek further advice from your legal department

**Yes** - obtain a copy of the relevant model set and guidance notes from the Communities and Local Government website ([www.communities.gov.uk](http://www.communities.gov.uk)).

Email [byelaws@communities.gsi.gov.uk](mailto:byelaws@communities.gsi.gov.uk) if further advice is required.





## Local government

### Annex 2 - Powers under which Local Authorities may make byelaws for which DCLG is the confirming authority

Powers under which Local Authorities may make Byelaws for which the Secretary of State is the confirming authority. Individual byelaws can be made only under the power governing the set to which they belong and cannot be transferred between sets.

The Secretary of State also expects byelaws to address, in general terms, behaviour which causes nuisance or danger to others. They should not be used to protect people from the consequences of their own actions.

### Pleasure grounds, public walks and open spaces (Model set 2)

s.164 of the Public Health Act 1875, s.12 and s.15 of the Open Spaces Act 1906, s.15 of the Open Spaces Act 1906

- Byelaws made under these powers should relate only to open land which is to be used as a pleasure ground. The 1906 Act is not, however, relevant when more than 5% of the area is covered by buildings. If held by the Council the land must be held under either the 1875 or 1906 Act or under an Act without a byelaw-making power of its own.
- Grounds in which the Charity Commissioners have an interest can only be controlled with their agreement. In any case where there is a joint interest in a pleasure ground, the agreement of the other parties should be sought before byelaws are drafted.
- Village greens are a special case. Further information is available from Communities and Local Government.
- For help in deciding under which power a byelaw should be made, reference should be made to the flow charts attached to the model byelaws issued by Communities and Local Government.

### Amusement Premises (Model set 3)

s.75, Public Health Act 1961 (as amended by s.22, Local Government (Miscellaneous Provisions) Act 1976)

This set includes byelaws on opening hours, on the safety and condition of the premises and on conduct at the premises.

### Pleasure fairs (Model set 4)

s.75, Public Health Act 1961 (as amended by s.22, Local Government (Miscellaneous Provisions) Act 1976)

This set includes byelaws on opening hours, the safety and condition of fairs and conduct at fairs.

- *The expression "pleasure fair" includes also amusement premises, roller skating rinks, circuses*

*and other entertainments described in subsection (3) of s.75.*

- *Byelaws made under this power may cover opening hours, safety, fire precautions, public order and avoidance of nuisance, but may not impose age limits or exclude minors*

## **Promenades ( Model set 5)**

s.83, Public Health Acts Amendment Act 1907

This set includes byelaws on cycling, skateboarding, motor vehicles, trading, kites and buggies, interference with life saving equipment and removal of signs and structures

## **Seashores (Model set 6)**

s 82, Public Health Acts Amendment Act 1907

This set includes byelaws on aircraft, bait digging, fires, fishing, games, horse riding, interference with life-saving equipment, public performances, trading, signs and structures.

## **Good rule and government and the prevention and suppression of nuisances (Model set 8)**

s.235, Local Government Act 1972

This set includes byelaws on riding on road verges, touting, urinating, interference with road warning equipment and live saving equipment.

N.B. Subsection (3) of s.235 is to be particularly noted: Councils should make byelaws under this power only when the issue they wish to address is not already covered by general legislation or a local Act and when it is not possible for them or another authority to make byelaws or take any other action under any other provision.

## **Markets (Model set 10) - s60, Food Act 1984**

This set includes byelaws on opening days and hours, animals, livestock markets, maintaining cleanliness.

## **Other**

Communities and Local Government also offers draft byelaws on the following:

### **1. Public Bathing**

s.231, Public Health Act 1936 (as amended by s.17, Local Government (Miscellaneous Provisions) Act 1976)

*to regulate public bathing (permitted areas and hours, siting, use of and charges for bathing huts, etc., wearing of bathing costumes, provision and maintenance of life-saving appliances, etc., prevention of danger from pleasure vessels). N.B. These provisions cannot be used to prohibit or regulate the use of jet skis.*

**2. Hairdressers and Barbers**

**3. Public conveniences**

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