

# Model byelaw 5: guidance notes

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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## Byelaws for Promenades

### Introduction

#### **The enabling power**

1. Section 83 of the Public Health Acts Amendment Act 1907 enables district councils to make byelaws to regulate the user of any promenade and to provide for the preservation of order and good conduct for the purpose of preventing danger, obstruction or annoyance to persons using the promenade. A parish council which considers that promenade byelaws are needed for its area might wish to contact the district council with their proposal, although any decision to make the byelaws would be at the district council's discretion.
2. Byelaws should not be adopted en bloc, but only as genuinely required to address an existing problem. If councils are in any doubt about the layout of the byelaws, they are advised to use the standard scheme and not seal the byelaws until they have received approval from the Secretary of State.

#### **Consultation**

3. Local authorities should consult as widely as is considered necessary about the implications of the byelaws. In the case of byelaws which imply that an activity will be confined to a particular area, any local disability groups (including associations for those with sight and hearing limitations) should be consulted to ensure that their opinions are taken into account and that any operational matter (such as appropriate signing) can be considered.

#### **Signs**

4. Local authorities are required to place notices when this is specifically mentioned in a byelaw. You should also consider whether notices would be helpful to draw the attention of the public to other byelaws.

#### **Fees and permits**

5. Byelaws should not be used to compel any person to pay a fee to the Council or to introduce a licensing or permit scheme. A requirement that a fee should be paid or a permit obtained may, in view of the decision in *Moorman v Tordoff* (1908), 72 J.P. 142, render the byelaw ultra vires and unreasonable.
6. If the Council is the owner or lessee of the promenade, it may be entitled to make charges or require permits in respect of the user of the promenade (subject to any public rights). However, any regulations making or requiring charges or permits must be entirely independent of the byelaws and must be drawn up to make it perfectly clear that non-compliance will not be a breach of any of the provisions of the byelaws.

## Use of the model

### Instructions and layout

7. Councils should download and edit the version of model byelaw set 5 - byelaws for promenades which can be found on the Communities and Local Government website. Where the standard procedure is being used, we would prefer councils to send to us an electronic version of their proposed byelaws.

8. Words highlighted in italic font in the model byelaw set give instructions on how to adapt the model (e.g. "*insert name*") or provide a more detailed description of what is covered by a model byelaw where a number of model byelaws relate to the same subject matter. Generally, square brackets are used to indicate: (1) additional wording, which it may be appropriate to use in some cases, (e.g. "[except in a designated area]") and (2) a choice of wording (e.g. "[*name of promenade/each of the esplanades and promenades described in the Schedule to these byelaws*]").

9. If the byelaws are to include schedules or maps, these should appear before the Council's seal.

### Interpretation provisions

10. The interpretation provision should be used to define terms which are repeated several times in the text of the byelaws. Councils should only include definitions which appear in the text of the byelaws that the Council has selected. Where a defined word only appears in the text of one of the byelaws which a Council proposes to adopt, that definition may be included within the text of the byelaw instead, preferably as a separate sub-paragraph.

### Application and Schedule

11. Where the byelaws will apply to several promenades, they should be listed in alphabetical order in a Schedule to the byelaws. If the byelaws are to apply to a limited part of a promenade, the description of the area should refer to physical landmarks which the public will recognise, and references to local authority boundaries or OS map references should only be used in addition to any descriptions. Any map or plan that is referred to in the byelaws should be: in black and white; of a suitable size for inclusion in the byelaws; and should precede the Council's seal. Colour can be used for maps, but Councils should be aware that after confirmation printed copies of the byelaws will have to be made available in colour.

## The model byelaws

### Vehicles

12. Section 34(1) of the Road Traffic Act 1988 (prohibition of driving mechanically propelled vehicles elsewhere than on roads) provides that if without lawful authority a person drives a mechanically propelled vehicle - (a) on to or upon any common land or moorland or land of any other description, not being land forming part of a road, or (b) on any road being a

footpath, bridleway or restricted byway, he is guilty of an offence. However, it is not an offence under section 34 to drive a mechanically propelled vehicle on any land within 15 yards of a road upon which vehicles may lawfully be driven for the purposes of parking on that land. Local authorities should rely upon the 1988 Act to prohibit the riding or driving of mechanically propelled vehicles on the promenade, and only adopt Model Byelaw 6 if it is intended to permit use of vehicles or certain classes of vehicles on some parts of the promenade.

## Trading

13. Model Byelaw 7 deals with obstruction or nuisance caused by persistent trading or touting. More general controls on the sale of goods should be dealt with under street trading law. Although the enabling power in section 82 of the Public Health Acts Amendment Act 1907 refers specifically to the regulation of selling and hawking, powers to control street trading under the Local Government (Miscellaneous Provisions) Act 1982 are more comprehensive and should be used in preference. "Street" includes beach for the purposes of the 1982 Act.

## Revocation

14. The text of model byelaw 18 contains a number of instructions which may require further elaboration:

*"insert name"* - the relevant name will be that of the Council which made the byelaws, even if that Council is no longer the local authority for that area or is now defunct.

*"insert date"* - this is the date on which the byelaws were made.

*"insert name of confirming authority"* - e.g. The Secretary of State for the Home Department.

*"insert date byelaws were confirmed"* - this is different from the date on which they byelaws came into force.

## Further information/contact points

15. Sealed or draft byelaws and any queries should be addressed to:

Mark Coram  
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Byelaws Section  
Local Governance  
Zone 3/J5, Eland House  
Bressenden Place  
London SW1E 5DU

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