

Model byelaw 2: guidance notes

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 pleasure grounds, public walks and open spaces

Introduction

The enabling power

1. Section 164 of the Public Health Act 1875 and section 15 of the Open Spaces Act 1906 enable local authorities to make byelaws for the regulation of public walks and pleasure grounds and of open spaces and burial grounds respectively. Section 12 of the Open Spaces Act 1906 extends the types of land for which byelaws can be made under section 15 of that Act. Which enabling powers are appropriate will depend on the statutory authority from which the Council's interest in the land is derived and whether or not the Council is involved in the management of the land.

2. If the Council cannot establish under what statute it holds a ground, it should act as though it held it under a statute without a specific byelaw-making power. Flowchart 1 should then be used to help identify the correct byelaw-making power for each ground the local authority wishes to regulate. The Flowchart applies to open land that is used as a pleasure ground. The Open Spaces Act 1906 is not, however, relevant when more than 5% of the area is covered by buildings.

3. Where there is a joint interest in any ground, it is advisable to seek the permission of all the interested parties before the byelaws are made. Grounds in which the Charity Commissioners have an interest can only be regulated with their agreement. Similarly, the agreement of the diocesan authorities, the incumbent, and the parochial church council should be sought where there are proposals to regulate burial grounds or churchyards. As it will normally not be appropriate or possible to regulate churchyards under section 164 of the Public Health Act 1875, councils should study carefully all of the relevant provisions of the Open Spaces Act 1906 (particularly sections 6, 11, 12, 15 and 20) before making byelaws. If a council has not acquired "any estate, interest or control" under the 1906 Act, it might be possible to make byelaws under section 235 of the Local Government Act 1972, but again, only with the written permission of the Church authorities.

4. Flowchart 2 should be used to help local authorities identify the correct byelaw-making power for any common land or town or village green they wish to regulate. The chart applies to common land and town or village greens, whether or not they are registered as such under the Commons Registration Act 1965. Please note that Flowcharts 1 and 2 do not provide a definitive statement of the law but are offered as guides only.

5. Byelaws should be adopted only if 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 to seal the byelaws until they have received approval from the Secretary of State.

Consultation

6. Some types of byelaw can be controversial and may attract objections if those who will be affected have not been consulted. These include byelaws in respect of horse-riding, metal detectors and power-driven model aircraft. We consider that in such cases local authorities should ensure that adequate local consultation has taken place before adopting such measures. Further guidance on these subjects is set out below.

7. In the case of byelaws which imply that skateboarding, roller skating and cycling will be confined to particular areas, local authorities should consult widely about the implications of such byelaws and, in particular, with any local disability groups (including associations for those with sight and hearing limitations) to ensure that their opinions are taken into account and that any operational matter (such as appropriate signing) can be considered.

Use of the model

Instructions and layout

8. Councils should download and edit the version of model byelaw set 2 - byelaws for public walks and pleasure grounds 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.

9. Words shown 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 (e.g. model byelaws 16 to 19 which are all concerned with horses). Generally, square brackets are used to indicate: (1) additional wording, which it may be appropriate to use in some cases (e.g. the wording "[except in a designated area for fishing]" in model byelaw 43 can be used if there is such an area in the ground but should otherwise be omitted); (2) a choice of wording (e.g. "[attached to a control line]/[kept under effective radio control]" in byelaw 49), where one form of wording must be chosen; or (3) numbers which it is likely will need to be updated when editing the model byelaw set.

Interpretation provisions

10. The general 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 model byelaws that the Council has selected.

11. Where the byelaws are to be broken down into Parts dealing with different topics, it may also be appropriate to include in the relevant Part, an interpretation byelaw to define terms used several times in that Part only (e.g. model byelaw 15 in Part 3).

12. Where a defined word only appears in the text of one of the byelaws which a Council proposes to adopt, that definition should be included within the text of the relevant byelaw, preferably as a separate sub-paragraph (e.g. model byelaw 4(2)).

Application and Schedules

13. Model byelaw 2 should be adopted where the byelaws will apply to only one ground or where the byelaws will apply uniformly to several grounds. Model byelaw 3 should be used in all other cases.

14. Where model byelaw 3 is adopted, grounds to which any byelaw applies specifically should be indicated, either in the relevant byelaw or in Part 1 of Schedule 2 (e.g. model byelaw 4, which should only be used in the circumstances set out in paragraph 19 below, might apply to some but not all of the grounds to which the byelaws apply generally).

Designated areas and routes

15. A number of model byelaws refer to a "designated area" or a "designated route". These terms refer to an area or route which the Council has set aside for a particular purpose. Any such area or route and its purpose must be indicated in the ground concerned by means of clearly displayed signs.

Descriptions of grounds and references to geographical locations

16. Where a Schedule is used to list the grounds to which the byelaws will apply, the list should be alphabetical by name or by brief description of location under an alphabetical list of the towns or districts in which the grounds are located.

17. Precise descriptions of the grounds are important: names of grounds should be used, or, if these are ambiguous, the Council should refer to street names or physical landmarks. 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

18. The notes below highlight points to bear in mind in relation to particular model byelaws.

Opening times

19. For reasons of enforceability, model byelaw 4 should be adopted only if the ground is enclosed on all sides and can be secured with lockable gates.

Protection of wildlife

20. Model byelaw 9 applies to the hunting, shooting or trapping of animals. If the ground includes a river or other waterway and it is sought to protect wildlife in the waterway, Model byelaw 42 (Fishing) should be adopted. Birds and their nests are already protected by section 1 of the Wildlife and Countryside Act 1981.

Climbing

21. Byelaws should not be used to protect people from the consequences of their own actions. For this reason, model byelaw 7, which is concerned with climbing, should only be used to prevent a nuisance from being caused to others.

Fires

22. The words in square brackets need only be adopted if camping or barbecues or both are to be permitted in an area of the grounds.

Horses

23. When the Secretary of State confirms byelaws, he must be satisfied that they are reasonable and do not discriminate unfairly against one section of the community. A ban on horse-riding in smaller grounds would be reasonable but not justified in grounds of 4 hectares (10 acres) or more.

24. Where a local authority wishes to make a byelaw to restrict or ban horse-riding in a particular ground, it should first consider what other facilities exist in the area for riding and also consult any local riding schools and, as far as possible, individual horse riders by e.g. placing notices at the entry to the ground or newspaper advertisements.

Vehicles

25. 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 in pleasure grounds and open spaces, and only adopt model byelaw 21 if it is intended to permit use of vehicles or certain classes of vehicles in some areas of the ground.

26. Model Byelaw 21 includes words in square brackets which may be adopted if the Council has, for example, set aside a route through a large ground for motorcycles. Where this is the case, Model Byelaw 21(2) enables persons wishing to make use of the designated route to transport their motorcycle through the ground to reach the route. This may need to be adapted to the circumstances of the ground in question, and will be unnecessary where it is possible to enter and exit the ground while remaining on the designated route.

Ball-games

27. It will usually only be appropriate to ban ball-games in a very small ground or an

ornamental garden. Where the playing of ball-games is to be banned or severely restricted there should be other grounds in the locality where ball-game restrictions do not apply.

28. Where a designated area for playing ball games is set aside and model byelaw 31 is adopted, the byelaw will not be breached unless a person breaking the rules set out in Schedule 3 (and displayed in the area) has been asked to desist from the prohibited behaviour. Only if that person ignores this request will they become liable to removal from the park and to prosecution. This proviso is important because model byelaw 31 could otherwise catch very trivial incidents.

Power-driven model aircraft

29. When adopting any of model byelaws 46 to 51, Councils should take account of the provisions of the Code of Practice on Noise from Model Aircraft, approved on 1st February 1982, which is obtainable from Her Majesty's Stationery Office and through booksellers. They should also consult the Safety Code of the British Model Flying Association for guidance on what types of model might be flown in particular grounds. Before making and advertising the byelaws the Council should bring their proposals to the notice of the British Model Flying Association, Chacksfield House, 31 St Andrew's Road, Leicester, LE2 8RE (website address: www.bmfa.org; telephone number 0116 2440028) and of any local model aircraft clubs and should consider their views.

30. Byelaws concerning model aircraft are designed to regulate (1) noise nuisance caused by aircraft; and / or (2) any public safety concerns caused by the use of larger and more powerful model aircraft. The basic wording in the definition of "power-driven" in Model Byelaw 45 addresses aircraft which create noise nuisance. If there is also a genuine public safety concern, the words in square brackets bring quieter model aircraft within the definition.

Metal detectors

31. Local authorities may introduce byelaws to prohibit or restrict the use of metal detectors in pleasure grounds. Byelaws to prohibit the use of metal detectors may be appropriate in grounds requiring special protection, for example areas consisting of closely mown and carefully cultivated turf and flower beds or sites of archaeological botanical or scientific interest or areas much used by blind or disabled persons. However, a byelaw which prohibits the use of metal detectors in areas not in need of special protection or from all the grounds in a particular area may be seen as over-restrictive and unreasonable. The model byelaw can be adapted to provide for partial bans as necessary.

32. Where a local authority wishes to introduce a byelaw to restrict or prohibit the use of metal detectors in any ground, we consider that it should first consult any local metal detector clubs or a national body representing metal detector users, such as the National Council for Metal Detecting, 51 Hilltop Gardens, Denaby, Doncaster, DN12 4SA (website address: www.nmcd.co.uk, telephone number: 01709 868521; e-mail: trevor.austin@ncmd.co.uk). The Department for Culture, Media and Sport, Buildings, Monuments and Sites Division, 2-4 Cockspur Street, London SW1Y 5DH (Dr Roger Bland Tel 020 7211 2011 should also be consulted.

Removal of offenders

33. It should be noted that in model byelaw 59, the term "officer of the Council" will not extend to an employee of a private security firm, even though authorised to act by the Council.

Revocation

34. The text of model byelaw 61 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.

35. Byelaws made under section 8(1)(d) of the Local Government Act 1894 can only be revoked by an order made by the Secretary of State: please contact Communities and Local Government for further information.

36. Communities and Local Government do not confirm byelaws relating to dogs (including byelaws revoking such byelaws). Instead, Councils must contact the Department for Environment, Food and Rural Affairs at WP4, Ashdown House, 123 Victoria Street, London SW1E 6DE. Telephone number: 020 7944 6312.

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

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