

# Model byelaw 6: 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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# Model byelaw 6: guidance notes

## Byelaws for the seashore

### Introduction

#### The enabling power

1. Section 82 of the Public Health Acts Amendment Act 1907 enables district councils only to make byelaws to regulate the user of the seashore and to provide for the preservation of order and good conduct for the purpose of preventing danger, obstruction or annoyance to persons using the seashore.

2. It will generally not be possible to prohibit an activity for which there is only a power to regulate. However, it may be possible to restrict certain aspects of the activity, for example by limiting that activity to certain areas of the seashore or certain times of the day. Where councils intend to deviate from the model byelaws, they should read the enabling power carefully to determine whether they have the power to do what is proposed.

3. Where any of the byelaws adopted by a council affect the foreshore below high-water mark and are made for the preservation of order and good conduct, section 82(4) of the Public Health Acts Amendment Act 1907 states that consent of the Board of Trade will be required before the byelaws come into operation. This function of the Board of Trade is now the responsibility of the Secretary of State for Transport. Such byelaws should be sealed and sent in **triplicate** to the Communities and Local Government for confirmation. Where the Secretary of State is minded to confirm the byelaws, they will be passed to the Department for Transport for the necessary consent.

4. **Byelaws should be adopted only if required to address an existing problem.** If councils are in any doubt about whether it is appropriate to adopt a particular byelaw, they are advised to use the standard scheme and not to seal the byelaws until they have been provisionally approved by the Secretary of State.

#### Consultation

5. Local authorities should consult as widely as they consider necessary on the implications of the byelaws (e.g. with groups for fishing, horse riding, etc). 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

6. Local authorities are required to place notices in conspicuous positions when this is specifically mentioned in a byelaw. You should also consider whether notices would be helpful in regard to other byelaws (e.g. to indicate a restricted area in which bait digging is not permitted in model byelaw 7).

## **Fees and permits**

7. 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 would, in view of the decision in *Moorman v Tordoff* (1908), 72 J.P. 142, render the byelaw ultra vires and unreasonable.

8. If the Council is the owner or lessee of the seashore, it may be entitled to make charges or require permits in respect of the user of the seashore (subject to any public rights). 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.

## **Vehicles**

9. Section 34(1) of the Road Traffic Act 1988 (prohibition against 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 seashore.

## **Use of the model**

### **Instructions and layout**

10. Councils should download and edit the version of model byelaws set 6 - byelaws for the seashore 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.

11. Words shown in italic font in the model byelaw set give instructions on how to adapt the model (e.g. "select from the following list terms to be used in the byelaws") 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. "[or the Duchy of Cornwall]" in model byelaw 24 where the Duchy of Cornwall has a proprietary interest in the area); (2) a choice of wording (e.g. '*No person shall ride a horse in any of the grounds listed in [the Schedule] OR [Schedule 1] OR [Part 2] of Schedule 2]*'); or (3) numbers which it is likely will need to be updated when editing the model byelaw set.

### **Interpretation provisions**

12. 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. Where a defined word only appears in the text of one of the model byelaws which a Council proposes to adopt, that definition may be included within the text of the byelaw, preferably as a separate sub-paragraph (see for example model byelaw 16(2)).

## **Application and Schedule**

13. Where the byelaws will apply to more than one area of seashore, those areas should be listed in a Schedule to the byelaws as indicated by the model set. The names or a description of the areas by reference to physical landmarks should be given under an alphabetical list of towns or districts in which the areas are located.

14. If the byelaws are to apply to a limited part of the seashore, 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**

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

## **Bait Digging**

16. The judgement in the case of *Anderson v. Alnwick District Council* [1993] 3 All ER 613 established that the public right to engage in bait digging is ancillary to the common law right to fish on the seashore. Bait digging may be regulated by these byelaws but may not be prohibited. Regulation might include the prohibition of bait digging within specified areas of the seashore or the prohibition of bait digging for commercial purposes except with the consent of the Council but byelaws cannot be used to ban bait digging altogether.

17. Any restricted area in which bait digging is prohibited should not be so extensive as to prevent bait being dug reasonably close by, since it could otherwise adversely affect the common law right. In the definition of "restricted area", the description of the area should if possible be given by reference to physical landmarks which the public will recognise. Paragraph 14 above gives further guidance on this point.

## **Public Shows and Performances**

18. Councils considering adopting model byelaw 11 should bear in mind their responsibilities as public authorities under the Human Rights Act 1998. Any restriction on such events must be justified under article 10 (freedom of expression). A complete prohibition on performances on the seashore is unlikely to be justified, so if model byelaw 11 is adopted an appropriate designated area must be set aside on the beach where performances can take place.

## Trading

19. Model byelaw 14 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.

## Fires and Parties

20. It is considered that a prohibition on lighting fires or holding parties may be ultra vires because it goes beyond regulation of the user of the seashore. However, it is recognised that controls over such events may be necessary in some areas for the preservation of order and good conduct, to prevent danger or nuisance to those using the seashore. Councils using byelaws to compel a person to pay a charge or obtain a permit in respect of the regulation of these events is likely to be ultra vires (see paragraphs 7 and 8 above).

## Revocation

21. The text of model byelaw 26 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 name of confirming authority"* - e.g. Secretary of State for the Home Department.

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

## Further information/contact points

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

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