

Model byelaw 8: 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.

Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

Documents downloaded from the www.communities.gov.uk website are *Crown Copyright* unless otherwise stated, in which case copyright is assigned to *Queens Printer and Controller of Her Majestys Stationery Office*.

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp or by writing to the Office of Public Sector Information, Information Policy Team, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax: 01603 723000 or e-mail: HMSOlicensing@cabinet-office.x.gsi.gov.uk.

This publication is only available online via the Communities and Local Government website: www.communities.gov.uk

Alternative formats under Disability Discrimination Act (DDA): if you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Model byelaw 8: guidance notes

Byelaws for Good Rule and Government

Introduction

The enabling power

1. Section 235 of the Local Government Act 1972 enables district and borough councils to make byelaws for the good rule and government of the whole or any part of the district or borough and for the prevention and suppression of nuisances.
2. Byelaws cannot be made under this section if provision for the purpose in question is made, or may be made, under any other enactment. Byelaws should not therefore be made under section 235 where general or local legislation addresses the problem or in respect of any area where another byelaw-making power is available. Before making byelaws, local authorities should consult the appropriate government department about any existing general legislation.
3. Many of the activities regulated by byelaws made under section 235 are not in themselves a danger or nuisance, but may be if conducted in certain areas or in a particularly hazardous or annoying manner. Consequently, local authorities do not have the power under section 235 to make byelaws to prohibit activities such as skateboarding or riding throughout their area. However, it may be appropriate to ban these activities in certain places where it causes a particular danger or nuisance, or to regulate the manner in which those activities can be conducted.
4. Byelaws should not be adopted en bloc, but only as genuinely required to address an existing problem. If councils are in doubt about the layout of the byelaws they are advised to use the standard scheme and not seal the byelaws until they have received the approval of the Secretary of State.

Use of the Model

5. 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. “[Outside the designated areas]”); (2) a choice of wording (e.g. “[Borough/District];” or (3) numbers which it is likely will need to be updated when editing the model byelaw set (e.g. Schedule [1]).
6. If the byelaws are to include schedules or maps, these should appear before the Council's seal.

Interpretation provisions

7. The general interpretation provision should be used to define terms which are used

several times in the text of the byelaws. Councils should only use the definitions in the list 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 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 byelaws 9(2) and 16(2)).

Application

8. Model byelaws 2, 3 and 4 provide alternative formulas for stating the geographical area to which the byelaws apply. Local authorities should consider carefully which provision or combination of provisions fulfils their intention.

9. Model byelaw 2 should be adopted where all of the byelaws will apply throughout the local authority area.

10. Model byelaw 3 should be adopted where the byelaws will apply to only parts of the local authority area.

11. Model byelaw 4(1) is appropriate where most of the byelaws are to apply throughout the local authority area, but with certain exceptions, set out in model byelaws 4(2) to (4).

12. Model byelaws 4(2) to 4(5) provide a number of possible means of limiting the application of one or more byelaws to part of the local authority area.

13. Model byelaw 4(2) is appropriate where the areas to which a byelaw is to apply are to be indicated by means of signs displayed in the relevant areas. This is likely to be appropriate only where small or clearly marked areas of land are covered by the byelaw.

14. Model byelaw 4(3) enables a council to designate parts of the local authority area covered by the byelaw by listing those areas in a schedule to the byelaws. The words in square brackets refer to the use of a plan. A plan should be used in most cases, as a verbal description of the area will often not be enough to ensure that the boundaries of the areas referred to are clear.

15. Model byelaw 4(4) is similar to model byelaw 4(3) except that it applies to a discrete type of structure (bridges rather than "designated areas"). A plan may be necessary in some cases (see notes for model byelaw 4(3)).

The model byelaws

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

Riding and vehicles on road margins and verges

17. In most cases the margin or verge of a road will form part of the highway, and can therefore be regulated by means of a traffic regulation order. These model byelaws should only be adopted where it is not possible to make a traffic regulation order. In model byelaw 6(2), heavy commercial vehicles are excluded because they are already subject to

regulation under sections 19 and 20 of the Road Traffic Act 1988.

Skateboarding, Etc

18. The definition of self-propelled vehicles is wide enough to encompass a number of activities in addition to skateboarding, including roller-blading and riding non-motorised scooters, but does not catch bicycles, wheelchairs or prams.

19. The words in square brackets in model byelaw 7 should be adopted where some or all of the land included in the "designated area" is a quasi-public space which has a private landowner (e.g. a privately owned car park), in order not to infringe on private property rights.

20. The words in square brackets in model byelaw 8 should be adopted where the Council wishes to adopt model byelaws 7 and 8 together, i.e. to impose a general prohibition on dangerous and nuisance skateboarding on footpaths and roads throughout the local authority area and a complete prohibition on skateboarding within more specific areas, in order to make it clear that model byelaws 7 and 8 do not overlap.

Fairground attractions causing obstruction to traffic

21. Model byelaw 9 regulates traffic hazards caused by fairground rides and stalls set up in public places or land adjacent to a public place or street. It cannot be used to regulate stalls or rides set up on the road, which should be dealt with by means of a traffic regulation order.

Games on or near the highway

22. Games played on the highway to the annoyance of users of the highway are regulated by section 161 of the Highways Act 1980. The purpose of these model byelaws 10 and 11 is to address respectively the nuisance or danger of games played near the highway and games which cause annoyance to local residents, who are not protected by the 1980 Act unless using the highway.

Touting

23. Model byelaw 12 is limited to obstruction or nuisance caused by persons touting for business for services or stopping passers-by for market research purposes. Activities to promote the sale of goods can be dealt with under street trading legislation. Touting for taxi business is already the subject of legislation and is therefore excluded from the scope of the byelaw.

Revocation

24. The text of model byelaw 18, which can be used to revoke byelaws, 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.

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

Further information/contact points

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

Mark Coram
Communities and Local Government
Byelaws Section
Zone 3/J5, Eland House
Bressenden Place
London SW1E 5DU
Email: Byelaws@communities.gsi.gov.uk

26. For enquiries about vehicles and general traffic legislation contact:

Department for Transport
Traffic Management Division
Great Minster House
76 Marsham Street
London SW1P 4DR
Telephone: 020 7944 2981