

BYELAWS (ENGLAND)

Introduction

1. This Legal Topic Note will outline the nature and use of byelaws together with information about the procedure to be followed for their creation, amendment or revocation. There are two different procedures, the standard procedure and the alternative procedure and which to use is determined by the type of byelaw (see paragraph 8 below).
2. A byelaw has been judicially defined as “an ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance” (*Kruse v Johnson [1898] 2 QB 91*). A byelaw is therefore a valid law that supplements, but does not replace, the general law. A byelaw is only valid in the area of the authority making it.
3. A byelaw can only be made by a person or body with statutory powers to make the byelaw; as a general rule, private individuals, bodies or associations have no such powers.

Desirability of Byelaws

4. Before making a byelaw, it is recommended that a parish council first considers whether there are other methods of controlling an undesirable activity.
5. For example, section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), a district council, county council in an area where there is no district council and a London Borough Council have powers to make a public spaces protection order (“PSPO”) to prohibit specific activities which are detrimental to the local community's quality of life such as drinking in public, begging, or dogs not kept under control. A principal authority which has made PSPO(s) must publish them on its website and display them on or adjacent to the public place(s) to which they relate (Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection

Orders) Regulations 2014). The 2014 Act makes it an offence for a person not to comply with PSPO. If a byelaw prohibits an activity which is also regulated by a PSPO then the byelaw has no effect in the area of the PSPO (s. 70 of the 2014 Act).

More information about PSPOs in relation to the control of dogs in public places is available in Legal Topic Note 17 – Control of Dogs.

6. Using another example of when a byelaw may not be effective is where a council can take practical steps to control or deter unwanted activity. For example, the placing of a low fence or whitened stones around an open space may deter car parking far more effectively than a byelaw.
7. A local council should therefore consider making byelaws as a last resort.

Powers of Parish Councils

8. A parish council has powers to make byelaws in relation to the following matters (standard procedure)

Function	Power
Provision of public conveniences	Section 87, Public Health Act 1936
Managing mortuaries and post-mortem rooms provided by the council	Section 198, Public Health Act 1936
Regulating the letting for hire of pleasure boats in a park or pleasure ground provided or managed by the council.	Section 54, Public Health Act 1961
Regulating parking places for bicycles and motor cycles provided by the council	Section 57(7), Road Traffic Regulation Act 1984

(Alternative procedure)

Function	Power
Regulating public walks or pleasure grounds provided by the council or to the cost of which the council has contributed	Section 164, Public Health Act 1875
Regulating an open space or burial ground owned or controlled by the council	Sections 12 and 15, Open Spaces Act 1906
Regulating baths, washhouses, swimming baths and bathing places under the council's management	Section 223, Public Health Act 1936
Regulating public bathing in the area	Section 231, Public Health Act 1936
Regulating swimming baths and bathing places not managed by the council and which open to the public at a charge	Section 233, Public Health Act 1936
Regulating Markets	Section 60, Food Act 1984

9. Model byelaws and guidance that are relevant to parish councils have been issued by the Department of Communities and Local Government (DCLG). They can be found at:
<https://www.gov.uk/government/collections/model-byelaws>.
10. It is possible to make byelaws which are not included in the models but, where appropriate, the 'confirming authority' (Secretary of State) must ensure that the proposed byelaw passes the tests described in paragraph 15 below.
11. A parish council which owns common land may grant a right of public access by deed and may obtain from the Secretary of State for the Environment an Order of Limitations which imposes conditions on the exercise of the right (s.193, Law of Property Act 1925). Breach of an Order of Limitations is an offence. In effect, therefore, such an Order operates in the same way as a byelaw.

Procedures for Making Byelaws

12. The standard procedure for making byelaws is set out in s.236 of the Local Government Act 1972 ("the 1972 Act"). The 'confirming authority' for parish councils in England is the Secretary of State. The alternative procedure is set out in s.236A of the 1972 Act and The Byelaws (Alternative Procedure) (England) Regulations 2016 (2016

Regs). The appendix to this LTN contains two flowcharts for the making of byelaws in England. One flowchart is for the standard procedure and is one for the alternative procedure.

13. A council should carefully consider the relevant guidance and model byelaw before proceeding to make byelaws (see paragraph 9 above). Parish councils should send draft or sealed byelaws and any queries to DCLG, 2 Marsham Street, London, SW1P 4DF.
14. The procedure for amending or revoking byelaws is the same as for making them except that for a revocation under the alternative procedure there is no procedure for submitting the proposed revocation to the Secretary of State (Regs 13 to 17 2016 Regs).

Validity of Byelaws

15. A byelaw is valid provided that it is –
 - a) Within the powers of the authority making it, i.e. it must be within the limits of the authorising statute;
 - b) Certain, i.e. it indicates clearly what action is required or prohibited;
 - c) Not contrary to the general law, i.e. it must not be inconsistent with the general law;
 - d) Reasonable, i.e. the byelaw-making authority must act in a reasonable manner, in good faith and on correct grounds.
16. Examples of byelaws (not involving local councils) which have been held invalid by the courts are –
 - An enabling power to make a byelaw relating to the removal of dust, ashes etc, did not authorise a byelaw which required occupiers of premises to remove snow from paths;
 - A byelaw ‘that no person shall wilfully annoy any passengers in a street’ was void for uncertainty because it did not describe in sufficient detail the activity it sought to prohibit;
 - A byelaw prohibiting betting in public places was void the general law permitted such betting subject to specified conditions; and

- A building byelaw requiring open space to be provided at the rear of every new building was unreasonable.

Enforcement of Byelaws

17. A failure to obey a byelaw is a criminal offence. As with other crimes, an offender should normally be reported to the police, although it may often be appropriate first to ask the offender not to repeat the offence. Anecdotal evidence gathered by NALC suggests that the police are often reluctant to prosecute the breach of a byelaw. This is partly because of the difficulty of getting evidence. If a council reports a breach to the police it should also give them the names of any witnesses who are prepared to attend court to give evidence. In any event, a parish council can bring proceedings under s.222 of the 1972 Act whether or not it has made the byelaw in question. Should a council decide to prosecute it will normally be well advised to instruct a solicitor to represent it. Further details in respect of councils' powers to commence proceedings are set out in LTN 15 (Legal Proceedings).
18. A prosecution for breach of a byelaw or an Order of Limitations (paragraph 11 above) must be taken in a magistrates' court, and proceedings must begin no later than 6 months after the date of the breach.

Penalty for Infringement of Byelaws

19. The normal penalty for infringing a byelaw is a fine. S.237 of the 1972 Act provides that the maximum fine is the sum fixed by the enactment empowering the making of the byelaw or, if no sum is so fixed, the sum of £50. For a continuing offence, an offender may in addition be fined up to £5 a day for each day that the offence continues after conviction (s.237, the 1972 Act).
20. Generally, the maximum penalty for breach of a car parking order is a fine at level 3 on the standard scale (currently £1000); for breach of an Order of Limitations (paragraph 11 above) it is a fine at level 1 on the standard scale (currently £200).
21. Byelaws may sometimes provide for enforcement by an alternative method, e.g. removal from the place to which the byelaw applies.
22. If the penalty provided by the byelaws is not adequate an injunction may be obtained from a civil court to stop further breaches of the byelaws. Thus in *A.G. v. Harris*

[1960] 3 All ER 207, H was convicted some 70 times for selling flowers on the highway. The maximum fine was then £2 and H was willing to pay it. Since the fine was clearly inadequate to deter H, an injunction was obtained, prohibiting him from continuing to trade on the highway. Breach of an injunction is a contempt of court for which imprisonment or a fine can be imposed.

Byelaws and Local Government Reorganisation

23. Where a parish boundary is altered, Article 41 of the Local Government Area Changes Regulations 1976 confirms that any byelaw in force in the local council area before boundary change:

- is effective in the new area; but
- does not apply to any area no longer in the parish.

Byelaws for Good Rule and Government

24. District councils have power to make 'byelaws for good rule and government and suppression of nuisances' (s.235, the 1972 Act). Such byelaws may extend to the whole of a district and may affect public behaviour on land or premises not owned or controlled by the district council (e.g. byelaws to control straw and stubble burning). By contrast byelaws made by parish councils can only be made in respect of and for premises which they own or control subject to two exceptions:

- regulating public bathing (s. 231, Public Health Act 1936); and
- regulating swimming baths and bathing places not managed by the council and which open to the public at a charge (s. 233, Public Health Act 1936).

25. A district council must notify a parish council if it proposes to make byelaws regulating:

- Hackney carriage licences (s.171(4) Public Health Act 1875, Part 002 Town Police Clauses Act 1847 and s.76 Public Health Act 1925)
- Seashore and promenade activities (ss.82 and 83 Public Health Acts Amendment Act 1907) and
- Naming of streets (s.160 Public Health Act 1875, s.2 Public Health Acts Amendment Act 1907 and ss.18 and 19 Public Health Act 1925).

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
15	Legal Proceedings	Sets out the powers which enable councils to commence legal proceedings.
17	Control of Dogs	Explains the powers of principal authorities to use Public Space Protection Orders (PSPOs) to control dogs in public spaces.
18	Local Councils' Powers to Provide Parking Spaces	Sets out the powers of councils to make byelaws in respect of parking.
19	Unauthorised parking on private land	Sets out the law on stopping vehicles parking without permission.
20	Markets and Other Events	Sets out the powers of councils to operate Markets.
71	Naming and Numbering of Streets	Sets out the obligations on district councils with regard to street naming and numbering.

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Byelaws standard procedure: flowchart

Preliminary steps

Local authority runs through concerns with local residents and identifies a problem a byelaw could help resolve.

Check existing legislation to see if the issue is already covered.

Establish what legislation should be used to make the byelaw and the confirming authority.



Drafting the byelaw

Draft byelaw or obtain a copy of the relevant Department for Communities and Local Government (DCLG) model byelaws with guidance, and adapt accordingly.

If adapting a DCLG model byelaw, ensure that the appropriate form is used and that none of the wording in the model is amended.



Provisional approval: DCLG

Submit draft byelaw and Application for Provisional Approval of Byelaws to 2 Marsham Street, London, SW1P 4DF.

DCLG will scrutinise the byelaw and provided there is no legal problem or conflict with government policy, notify the local authority that it can proceed to make and seal the byelaw.

Once the local authority has formally resolved to adopt the byelaw, make the byelaw under the common seal of the authority (place after any schedule or plan included in the byelaw). The byelaw should be signed and dated by the nominated local authority officer.

If the byelaw is made by a parish or community council without a seal, it must be signed by two members of the council.



Advertising the byelaw

Advertise a notice of intention to apply for confirmation of the byelaw in one or more local newspapers.

Keep a copy of the byelaw for at least a month after the date of publication of the newspaper(s) at the local authority's offices for public inspection.

Provide a copy of the byelaw to any member of the public who applies for one.



Confirmation by DCLG

Apply to the DCLG for confirmation once the byelaw has been made available for inspection for at least one month.

Application should include:

- Two sealed copies of the byelaw.
- A copy of the newspaper(s) or a photocopy of the relevant advertisement of the byelaw.
- A covering letter providing responses to any objections received by the DCLG during the application period and any requests for the byelaw to be enforced at an earlier date, accompanied by reasons.



Contentious applications: public inquiry

Where objections have been raised to the byelaw, a public inquiry may be ordered before confirming the byelaw.



Approval by Secretary of State

Secretary of State confirms approval and returns byelaw to the local authority.

Secretary of State fixes a date on which the byelaw will come into force (normally one month from confirmation).

Copy of confirmed byelaw made available for public inspection at the offices.

Byelaws alternative procedure: flowchart

Preliminary steps

Local authority runs through concerns with local residents and identifies a problem a byelaw could help resolve.

Check existing legislation to see if the issue is already covered.

Establish what legislation should be used to make the byelaw and the confirming authority.



Drafting the byelaw

Draft byelaw or obtain a copy of the relevant Department for Communities and Local Government (DCLG) model byelaws with guidance, and adapt accordingly.

If adapting a DCLG model byelaw, ensure that the appropriate form is used and that none of the wording in the model is amended.



Carry out an assessment of whether the regulatory burden imposed by the proposed byelaw is proportionate

The assessment of regulatory burden must include:

the objective of the proposed byelaw;

whether that objective could be satisfactorily achieved by another means;

the impact of the proposed byelaw on anyone identified by the council as being potentially affected by it; whether the proposed byelaw would increase or lessen the regulatory burden on those persons (assessed in money terms); and

how any alternative means and the proposed byelaw compare with carrying out no further action.



Prepare a statement of the assessment

As a result of the assessment the council must produce an assessment statement giving the council's: conclusions about the impact of the proposed byelaw on anyone potentially affected by it; conclusions as to whether the proposed byelaw results in an increase in the regulatory burden; and in the event that the proposed byelaw results in an increase in the regulatory burden, the reasons why such an increase is considered to be proportionate and necessary.



Publish the assessment statement

The council must publish the statement on its website (if it has one); and publicise it in such manner as it considers is likely to bring the statement to the attention of persons who live in its area or may otherwise be affected.



Submit proposed byelaw to Secretary of State (Optional)

Once the assessment statement has been prepared the council *may* apply to the Secretary of State for approval of a scheme (approval is not mandatory). The application for approval must contain:

- the draft byelaw;
- the assessment statement; and
- a report setting out:
 - the enabling power under which the byelaw is to be made;
 - that the procedure for making the byelaw is that specified in The Byelaws (Alternative Procedure) (England) Regulations 2016;
 - the purpose of and need for the byelaw, which must include, but need not be limited to, the objective of the proposed byelaw;
 - the extent of the objective including its geographical extent;
 - the measures, if any, the council has taken to address the objective;
 - the council's reasons for considering why the proposed byelaw fulfils the necessary objective and confirmation that the proposed byelaw is not solely intended to protect persons from the consequences of their own action;
 - the reasons for considering that the byelaw is reasonable in its proposed application, which must include, but need not be limited to why any sanction specified in the proposed byelaw is necessary and proportionate;
 - the extent (if any) to which any other enactment already fulfils the purpose identified and explaining why, notwithstanding that enactment, the relevant authority believes there is a need for the byelaw;
 - where that does not apply, that the byelaw does not conflict with any existing enactments;
 - whether the relevant authority has revoked or is revoking any byelaw;
 - whether the council intends to make use of any model byelaw and if so what (if any) adjustments to the model byelaw are proposed and confirmation that the council has followed the guidance accompanying the model byelaw;
 - by reference to a map where necessary, the land to which the byelaw, if made, will apply;
 - the extent of the consultation that has been undertaken and the result of that consultation; and
 - a summary of any objections made in response to that consultation and the council's response to such objections, to include copies of all correspondence dealing with the objections.



Response by Secretary of State

The Secretary of State must respond in writing to an application within 30 days of which the application being submitted to the Secretary of State. The Secretary of State may allow the council to make the byelaw; send an acknowledgement to the council stating that the Secretary of State will issue a substantive response as soon as practicable; or refuse to give permission to make the byelaw.



Publication of the proposed byelaw

Where the council decides to propose the making of the byelaw they must publish a notice of the proposal on its website (if any) and in one or more local newspapers circulating in the area in which is situated the land in respect of which the byelaw, if made, will apply; and publicise that notice in such other manner as it sees fit.

The notice must:

- identify the land to which the byelaw, if made, will apply;
- give a summary of its intended effect;
- give the address where the assessment report can be viewed (free of charge) at reasonable hours;
- give the address from which copy documents can be obtained (for a reasonable charge);
- give a period of at least 28 days for inspection and written representations and the postal or email address for representation.



Written representations and decision

Where the council receives any written representations within the period specified (at least 28 days) it must consider them before making any decision and no later than six months after the end of that period the council must decide whether to make the proposed byelaw with or without minor modification.



Public copy of byelaw and notices

- At least seven days before the day when the byelaw comes into force, the council must deposit a copy of the byelaw at its principal office;
- where practicable, place signs summarising the byelaw in conspicuous positions on or near the land in respect of which it applies;
- publish on its website (if any) a notice stating that the byelaw has been made; specify the date on which it comes into force;
- specify the place at which it may be inspected and copies obtained; and
- publicise the byelaw in such manner as it considers fit.



Copy of the byelaw to/from District Council

A parish council must send a copy of its byelaw to the proper officer of the district council, and the proper officer of the district council must ensure that a copy is deposited with the public documents of the district.

A district council must send a copy of its byelaw to the proper officer of every parish council that includes land in respect of which the byelaw applies or, where a parish does not have a parish council, to the chairman of the parish meeting, and the proper officer of the parish council or the chairman of the parish meeting must ensure that a copy is deposited with the public documents of parish.



Making and effect of the new byelaw

The byelaw must be made under the common seal of the council or, in the case of a byelaw made by a parish council not having a seal, under the hands and seals of two members of the council.

The byelaw comes into force 30 days after the date on which it is made unless a different date is specified in the byelaw.



Public copy of byelaw

A copy of the byelaw must be open to public inspection without payment at all reasonable hours and the council must provide a copy of the byelaw to any person on request and on payment of such reasonable charge as the council decides.