

BYELAWS (ENGLAND)

Introduction

1. The power to make byelaws gives a parish council the opportunity to address any issues that are significant for its community but which are not covered by the general law. 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.
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, a parish council should first consider whether it would be more effective to adopt a different method of controlling an undesirable activity. For example, the placing of a low fence or whitened stones around an open space will deter car parking far more effectively than a byelaw. In effect, therefore, a byelaw should be a remedy of last resort.

Powers of Parish Councils

5. A parish council has powers to make byelaws in relation to the following matters –

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 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 an open space or burial ground owned or controlled by the council	Section 15, Open Spaces Act 1906
Managing mortuaries and post-mortem rooms provided by the council	Section 198, Public Health Act 1936
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 parking places for bicycles and motor cycles provided by the council	Section 57(7), Road Traffic Regulation Act 1984
Regulating Markets	Section 60 Food Act 1984

6. 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: <http://www.communities.gov.uk/publications/localgovernment/modelbyelaw>. It is possible to make byelaws which are not included in the models but the 'confirming authority' must ensure that the words pass the tests described in paragraph 12 below.
7. 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

8. The 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.
9. The Government has issued Guidance Notes to local authorities considering the making of byelaws. This is partly because of the difficulty of securing evidence of breach of a byelaw. A council should carefully consider this and obtain a copy of the relevant model byelaw before proceeding to make byelaws. Parish councils should send draft or sealed byelaws and any queries to Byelaws Section, Zone 3/J1, Eland House, Bressenden Place, London SW1E 5DU.
10. The procedure for amending or revoking byelaws is the same as for making them.
11. The appendix to this LTN contains a flowchart for the making of byelaws in England.

Validity of Byelaws

12. 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 prohibit something allowed by, or be otherwise inconsistent with, the general law;
 - d) Reasonable, i.e. the byelaw-making authority must exercise its powers in a reasonable manner, in good faith and on correct grounds.
13. 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 for repugnance since statute 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

14. 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 securing 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 pursuant to 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).
15. A prosecution for breach of a byelaw or an Order of Limitations (paragraph 7 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

16. 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 1972 Act).
17. 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 7 above) it is a fine at level 1 on the standard scale (currently £200).
18. Byelaws may sometimes provide for enforcement by an alternative method, e.g. removal from the place to which the byelaw applies.

19. If the penalty provided by the byelaws is not adequate an injunction may be obtained from a civil court to restrain commission, or further commission, of 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

20. Byelaws made by authorities abolished or altered by the 1972 Act were, as a general rule, continued in force after 31 March 1974 for the areas to which they originally applied (s. 262(8), 1972 Act). The Secretary of State has power to adapt such byelaws to post-March 1974 areas and to revoke older byelaws if they are obsolete, spent or unnecessary.
21. Where a parish boundary is altered, Article 41 of the Local Government Area Changes Regulations 1976 (SI.246) provides as follows:
- Any byelaws in force in the parish are effective in the area as altered;
 - Any byelaws in force in a parish do not apply to any area no longer in the parish

Byelaws for Good Rule and Government

22. District councils have power to make 'byelaws for good rule and government and suppression of nuisances' (s.235, 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 or to prohibit the fouling of streets by dogs). 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).

23. 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 (s.82,s.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 s.18,s.19 Public Health Act 1925).

Changes to the Byelaws regime – These provisions are not yet in force

24. Part 6 of the Local Government and Public Involvement in Health Act 2007 amended the 1972 Act in respect of the procedure for making byelaws (currently contained in s.236, the 1972 Act). It does not appear that Part 6 is intended to replace the procedure set out in s.236 but instead it will provide an alternative to be used for a prescribed class of byelaws.

25. The 2007 Act introduced the following provisions into the 1972 Act:

- fixed penalty notices for breaches of byelaws (s. 237A)
- use of fixed penalty receipts (s. 237D)
- the provision of guidance by the Secretary of State (s. 237E)

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.
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.

Byelaws 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 the Byelaws Section, Zone 3/J1, Eland House, Bressenden Place, London SW1E 5DU.

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.