

Confirmation of Byelaws relating to Countryside Recreation: Proposals for Change. A Consultation Document. July 2005. Defra

The Local Access Forum will be statutorily consulted on any byelaws affecting access land. Byelaws are local laws made by the local authority, following consultation, and confirmed by Defra. A byelaw may be used where there is no other legislation which could deal with a problem. Byelaws are used infrequently.

Currently there are two sets of model clauses, one for Commons and Town and Village Greens and the other for National Parks and Country Parks. The proposal is to modernise and merge the two sets to allow a fast-track system for applications made under The Open Spaces Act 1906, The National Parks and Access to the Countryside Act 1949 and The Local Government Act 1972. The proposed model clauses are attached (Annex A).

The Local Access Forum should consider the following questions:

1. **Are the model clauses acceptable?** (Attached as Annex A)
2. **Are there any clauses which should be added or deleted for the fast-track scheme?** Reference to the following consultation document shows the existing two sets of clauses.
<http://www.defra.gov.uk/corporate/consult/recreationbyelaws/index.htm>
The following are included in the existing legislation but NOT in the proposed model fast-track byelaws. These would have to be applied for using the proforma in Annex E and not under the fast-track process.
Angling, bait digging, ball games, boats, children's play apparatus and children's play areas, climbing, cycling, fires, gates, grazing, horses, interference with life-saving equipment, model boats, overnight parking, protection of flower beds, trees etc., protection of wildlife, repairing of vehicles, skateboarding and roller-skating, throwing games (archery, discus etc.) and vehicle use.
3. **Authorities using the model clauses would make, seal and advertise the byelaws without consulting Defra. If there are no objections Defra would determine the application, sent using a proforma (Annex D), within ten working days.**
Is the fast-track scheme a good idea and is the time-scale appropriate?
4. **Should authorities explain to Defra what measures they have previously undertaken to resolve the problems?**
5. **Is the proforma helpful?**
6. **Are there any comments on the draft proforma?**
7. **Is the additional proforma (Annex E) detailing non-model clauses and seeking Defra's advice a good idea?** Defra suggests a turn round of fifteen working days for minor changes to Defra model clauses. **Is this time-scale appropriate?**
8. **Currently some authorities do not respond quickly enough to Defra's requests for additional information on more complicated byelaws. Under the proposals Authorities should respond within six weeks and, if they do not, the application should be seen as lapsed, unless the authority gives reasons for the delay. Is this time-frame acceptable?**

Hilary Winter, Secretary

Annex A: Proposed new model byelaws for commons, town and village greens, National Parks and Country Parks

1. Aircraft

No person shall, except in case of emergency or with the consent of the byelaw-making authority, take off from or land upon the land in an aircraft, helicopter, hang-glider or hot-air balloon.

2. Bathing

No person shall, without reasonable excuse, bathe or swim in any waterway comprised in the land, except in an area where a notice exhibited by the byelaw-making authority permits bathing and swimming.

3. Camping

No person shall on the land, without the consent of the byelaw-making authority, erect a tent or use any vehicle, including a caravan, or any other structure for the purpose of camping, except on any area which may be set apart and indicated by notice as a place where camping is permitted.

4. Erection of structures

No person shall on the land, without the consent of the byelaw-making authority, erect any post, rail, fence, pole, tent, booth, stand, building or other structure.

5. Games

- (i) Where the byelaw-making authority has, by a notice placed in a conspicuous position on the land, set apart an area on the land for the playing of such games as may be specified in the notice, no person shall:
 - (a) play in such an area any game other than the game for which it has been set apart;
 - (b) use any such area so as to give reasonable grounds for annoyance to any person already using that area for any purpose for which it has been set apart; or
 - (c) play any game so specified in any other part of the land in such a manner as to exclude any person not playing the game from the use of that part.
- (ii) No person shall, in any area of the land which may have been set apart by the byelaw-making authority for any game, play any game when the state of the land or other cause makes it unfit for use and a notice is placed in a conspicuous position prohibiting play in that area of the land.
- (iii) (1) No person shall on the land play any game:
 - (a) so as to give reasonable grounds for annoyance to any other person on the land; or
 - (b) which is likely to cause damage to any tree, shrub or plant

on the land.

(2) This byelaw shall not extend to any area set apart by the byelaw-making authority for the playing of any game.

6. Golf

No person shall on the land drive, chip or pitch a hard golf ball [except on land set aside by the byelaw-making authority for use as a golf course, golf driving range, golf practice area or putting course].

7. Interpretation

In these byelaws:

"the byelaw-making authority" means [.....]

"the land" means [.....]

"model aircraft" means

- (a) an aircraft which either weighs between 100 grams and 7 kilograms without its fuel or
- (b) an aircraft which weighs more than 7 kilograms and up to 20 kilograms without its fuel and is regulated by the Air Navigation Order, Clause 87 or
- (c) an aircraft which weighs over 20 kilograms without its fuel and which is exempt from the Air Navigation Order.

8. Kites

No person shall on the land fly or cause or permit to be flown any kite in such a manner as to cause a danger or annoyance to any other person on the land

9. Metal detectors

No person shall on the land use any device designed or adapted for detecting or locating any metal or mineral in the ground.

10. Missiles

No person shall on the land, to the danger or annoyance of any other person on the land, throw or discharge any missile.

11. Model aircraft

11.1. **General Prohibition**

(a) No person shall on the land release any model aircraft for flight or control the flight of such an aircraft.

(b) No person shall cause any model aircraft to take off or land on the land.

(c) No person shall cause any model aircraft to fly over the land.

11.2. Use permitted in Certain Specified Areas

- (1) Where any part of the land has, by a notice conspicuously exhibited on the land, been set apart for the flying of model aircraft, no person in any other part of the land shall release any such aircraft for flight, or control the flight of such an aircraft, and no person shall, in such other part of the land:
 - (a) cause such an aircraft to take off; or
 - (b) without reasonable excuse, cause such an aircraft to land;
 - (c) cause such an aircraft to fly over such other part of the land
- (2) Where an area within a part of the land so set apart for the flying of model aircraft is designated as an area from which aircraft may be launched and is described in a notice placed in a conspicuous position on the land, no person shall release such an aircraft for flight, or cause such an aircraft to take off, in any part of the land other than that area.

11.3. Use Permitted if Under Control

No person shall on the land:

- (a) release any model aircraft for flight or control the flight of such an aircraft; or
- (b) cause any such aircraft to take off or land on the land, unless it is *[insert as necessary according to the circumstances of the ground]* attached to a control line *[or]* radio-controlled *[and]* kept under effective control.

11.4. Use Permitted within Specified Hours

No person shall on the land:

- (a) release any model aircraft for flight or control the flight of such an aircraft; or
- (b) cause any such aircraft to take off or land, except on the days and during the hours specified in the following table:

Name of Land	Days	Hours

12. Noise

- (1) No person on the land shall, after being requested to desist by an officer of the byelaw-making authority, or by any person annoyed or disturbed, or by any person acting on his behalf:

- (a) by playing on a musical instrument; or
- (b) by operating or permitting to be operated any radio, gramophone, amplifier, tape recorder or similar instrument;

cause or permit to be made any noise which is so loud or so continuous or repeated as to give reasonable cause for annoyance to other persons on the land.

- (2) This byelaw shall not apply to any person holding or taking part in any entertainment held with the consent of the byelaw-making authority.

13. Obstruction/Annoyance

No person shall on the land:

- (a) intentionally obstruct any officer of the byelaw-making authority in the proper execution of his duties;
- (b) intentionally obstruct any person carrying out an act which is necessary to the proper execution of any contract with the byelaw-making authority; or of the land, or behave so as to give reasonable grounds for annoyance to other persons on the land.

14. Penalty

Any person offending against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

15. Pollution of waterways

No person shall intentionally, carelessly or negligently foul or pollute any waterway comprised in the land.

16. Public shows, exhibitions and structures

No person shall on the land, without the consent of the byelaw-making authority, place or take part in any show or exhibition, or set up any swing, roundabout or other like thing.

17. Removal of structures

No person shall, without reasonable excuse, remove from or displace on the land any barrier, railing, sign, post or seat, or any part of any structure or ornament, or any implement provided for use in the laying out or maintenance of the land.

18. Removal of substances

No person shall remove from or displace on the land any stone, soil or turf, or the whole or any part of any plant, shrub or tree.

19. Revocation

- (i) The byelaws made by-----on-----

and confirmed by-----on----
relating to the land are hereby revoked.

- (ii) Byelaws [] and [] of the byelaws made by -----
-----on -----and confirmed by the (Secretary of
State for-----) on---- relating to the
land are hereby revoked.

20. Savings

- (1) An act necessary to the proper execution of his duty on the land by an officer of the byelaw-making authority, or any act which is necessary to the proper execution of any contract with the byelaw-making authority, shall not be an offence under these byelaws.
- (2) Nothing in or done under any of the provisions of these byelaws shall in any respect prejudice or injuriously affect any public right of way through the land, or the rights of any person acting legally by virtue of some estate, right or interest in, over or affecting the land or any part thereof.

21. Trading

No person shall on the land, without the consent of the byelaw-making authority, sell, or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any commodity or article.

22. Watercourses

No person shall knowingly cause or permit the flow of any drain or watercourse on the land to be obstructed or diverted, or open, shut or otherwise work or operate any sluice or similar apparatus on the land.

Annex D: Proposed fast track application form

This proforma is to accompany:

(i) Byelaws submitted for confirmation under the Fast Track Scheme. Please complete and submit with two copies of the sealed byelaws after the byelaws have been on deposit for one month. Please ensure that you have complied with paragraphs 4 – 4.9 of Defra Circular 1/2005 before you submit the byelaws for confirmation.

Application for confirmation of byelaws based on Defra models (fast track scheme)

Name of Applicant Authority

Legislation under which byelaws are made

Please tick the appropriate legislation

Commons and Town and Village Greens

s. 12 and s.15 Open Spaces Act 1906 _____

N.B Applications for byelaws relating to burial grounds are dealt with by the Office of the Deputy Prime Minister, Democracy and Local Leadership Division, Zone 5/B1, Eland House, Bressenden Place, London SW1E 5DU Telephone: 020 7944 8154 Further details can be found on the ODPM website at www.odpm.gov.uk

s. 235 Local Government Act 1972 _____

N.B. Subsection (3) of s.235 is to be particularly noted: byelaw-making authorities should make byelaws under this power only when the issue they wish to address is not already covered by general legislation or a local Act and when it is not possible for them or another authority to make byelaws or take any other action under any other provision.

National Parks and Areas of Outstanding Natural Beauty

s.90 National Parks and Access to the Countryside Act 1949 _____

For applications under s.90 of the National Parks and Access to the Countryside Act 1949 have you consulted the Countryside Agency? Yes/No

Country Parks and Picnic Sites

s.41 Countryside Act 1968 _____

Please note that byelaws under other Acts may only be made under the standard scheme

Why are the byelaws necessary?

Please note: applications for confirmation under the fast track scheme **must follow exactly** the wording of the Defra models.

If any variations or additions to the model are included, the application will be returned for resubmission under the standard scheme.

Please insert answers in the spaces provided, continuing on a separate sheet if necessary.

1. Byelaws should not attempt to address in general terms issues which are essentially national rather than local. Please explain what the specific local problem is which the proposed byelaws are intended to address.

2. Please explain the nature, location, extent and incidence of the problem and the reasons why the Authority considers byelaws are necessary to combat the nuisance being addressed.

3. What measures have been taken to address the nuisance?

4. Why is the byelaw-making authority satisfied that the nuisance is so great as to merit a criminal offence?

5. Please confirm that the aim of the byelaws is not solely to protect people from the consequences of their own actions.

6. If appropriate, please describe what consultation required by the legislation has been carried out.

7. Please describe what informal consultation has taken place, both with individuals and groups likely to be affected by the byelaws.

8. Is the authority content that the byelaws are reasonable in how they will be applied in the particular local context (i.e. that they are not partial or unequal in their application, that they are not manifestly unjust, and that they do not involve oppressive or gratuitous interference with the rights of those whom they affect)? Please justify this view.

9. Please confirm that:

(a) the proposed byelaws do not duplicate or conflict with existing byelaws, or

(b) the Authority has included a byelaw revoking existing byelaws. ¹¹

¹¹ Byelaws made under section 8 (1) (d) of the Local Government Act 1894 cannot be revoked by byelaws made under any other enactment. They must be revoked by an Order under section 262 (8) (d) of the Local Government Act 1972

10. Please confirm that the byelaws do not duplicate or conflict with any:

- existing local Act Yes/No
- national legislation or common law. Yes/No
- central government policy of which they are aware Yes/No

11. List any objections of which the authority is aware at this stage and the authority's response to those objections. Copies of any letters of objection or other relevant documentation should be attached.

12. The byelaws will come into effect one month after confirmation unless there are special circumstances which make it desirable for the byelaws to come into operation on a different date. If an alternative date is preferred, please state the preferred date here _____ and explain why this date is required _____

I submit the byelaws for confirmation in accordance with the fast track scheme set out in paragraphs 4 – 4.9 of Defra Circular /2005.

The Chief Executive, Secretary or other proper officer of the authority, as designated by the authority, should sign the proforma.

Signature _____

Name _____

Position _____

Date _____

Annex E: Proposed standard application form

Application for provisional approval of byelaws, the enabling legislation for which is not included in the Fast Track Scheme, or which vary, or are not covered by, a Defra model (standard scheme)

Name of Applicant Authority _____

Legislation under which byelaws are made

Please tick the appropriate legislation

Commons and Town and Village Greens

s. 12 and s.15 Open Spaces Act 1906 _____

N.B Applications for byelaws relating to burial grounds are dealt with by the Office of the Deputy Prime Minister, Democracy and Local Leadership Division, Zone 5/B1, Eland House, Bressenden Place, London SW1E 5DU Telephone: 020 7944 8154 Further details can be found on the ODPM website at www.odpm.gov.uk

s. 235 Local Government Act 1972 _____

N.B. Subsection (3) of s.235 is to be particularly noted: byelaw-making authorities should make byelaws under this power only when the issue they wish to address is not already covered by general legislation or a local Act and when it is not possible for them or another authority to make byelaws or take any other action under any other provision.

s.17 of the Countryside and Rights of Way Act 2000 _____

N.B Byelaws under section 17 of the Countryside and Rights of Way Act 2000 cannot be confirmed until the land is access land.

*For applications under section 17 of the Countryside and Rights of Way Act 2000 have you consulted the Countryside Agency and the local access forum?
Yes/No*

National Parks and Areas of Outstanding Natural Beauty

s.90 National Parks and Access to the Countryside Act 1949 ___ _

s.12 Countryside Act 1968 _____

s.13 Countryside Act 1968 _____

For applications under s.90 of the National Parks and Access to the Countryside Act 1949 or sections 12 and 13 of the Countryside Act 1968 have you consulted the Countryside Agency? Yes/No

s.17 of the Countryside and Rights of Way Act 2000 _____

N.B Byelaws under section 17 of the Countryside and Rights of Way Act 2000 cannot be confirmed until the land is access land.

For applications under section 17 of the Countryside and Rights of Way Act 2000 have you consulted the Countryside Agency and the local access forum? Yes/No

Country Parks and Picnic Sites

s.41 Countryside Act 1968 _____

s.17 of the Countryside and Rights of Way Act 2000 _____

N.B Byelaws under section 17 of the Countryside and Rights of Way Act 2000 cannot be confirmed until the land is access land.

For applications under section 17 of the Countryside and Rights of Way Act 2000 have you consulted the Countryside Agency and the local access forum? Yes/No

Countryside

s. 17 Countryside Green Belt (London and Home Counties) Act 1938

Other Acts (please note that byelaws under other Acts may only be made under the standard scheme)

If the byelaws are made under a Scheme of Management please give details of that Scheme

Please specify

Why are the byelaws necessary?

Application for provisional approval of byelaws, the enabling legislation for which is not included in the Fast Track Scheme, or which vary, or are not covered by, a Defra model (standard scheme)

Applications made under the standard scheme should be submitted to Defra in draft form before sealing and advertising.

Please insert answers in the spaces provided, continuing on a separate sheet if necessary.

1. Byelaws should not attempt to address in general terms issues which are essentially national rather than local. Please explain what the specific local problem is which the proposed byelaws are intended to address.

2. Please explain the nature, location, extent and incidence of the problem and the reasons why the Authority considers byelaws are necessary to combat the nuisance being addressed.

3. What measures have been taken to address the nuisance?

4. Why is the byelaw-making authority satisfied that the nuisance is so great as to merit a criminal offence?

5. Please confirm that the aim of the byelaws is not solely to protect people from the consequences of their own actions.

6. If appropriate, please describe what consultation required by the legislation has been carried out.

7. Please describe what informal consultation has taken place, both with individuals and groups likely to be affected by the byelaws.

8. Is the authority content that the byelaws are reasonable in how they will be applied in the particular local context (i.e. that they are not partial or unequal in their application, that they are not manifestly unjust, and that they do not involve oppressive or gratuitous interference with the rights of those whom they affect)? Please justify this view.

9. Please confirm that:

(a) the proposed byelaws do not duplicate or conflict with existing byelaws, or

(b) the Authority has included a byelaw revoking existing byelaws.²

² Byelaws made under section 8 (1) (d) of the Local Government Act 1894 cannot be revoked by byelaws made under any other enactment. They must be revoked by an Order under section 262 (8) (d) of the Local Government Act 1972.

10. Please confirm that the byelaws do not duplicate or conflict with any:

- existing local Act Yes/No
- national legislation or common law. Yes/No
- central government policy of which they are aware Yes/No

11. List any objections of which the authority is aware at this stage (i.e. before sealing and advertisement of the byelaws) and the authority's response to those objections. Copies of any letters of objection or other relevant documentation should be attached.

12. The byelaws will come into effect one month after confirmation unless there are special circumstances which make it desirable for the byelaws to operate at an earlier date. If an alternative date is preferred, please state here _____ and explain why this date is required _____

The attached draft byelaws do not follow exactly a Defra model. I submit the draft byelaws for provisional approval prior to sealing and advertisement in accordance with the standard scheme set out in paragraphs 4 – 4.9 of Defra Circular 1/2005.

The Chief Executive, Secretary or other proper officer of the authority, as designated by the authority, should sign the proforma.