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A guide to making Local Nature Reserve Byelaws

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1. Introduction

Councils are given the power to provide, or secure the provision of Local Nature Reserves (LNRs) under section 21 of the National Parks and Access to the Countryside Act 1949 as amended. It may be desirable or necessary to apply byelaws to a LNR to protect its scientific interest from potentially damaging activities.

Where a LNR is designated as a Site of Special Scientific Interest (SSSI), it is also possible for Natural England to make an application for the confirmation of SSSI byelaws made under the Wildlife and Countryside Act 1981 as amended. In such circumstances, it will be for the council and Natural England to decide how they wish to proceed. However, it will not be possible for a LNR to be subject to both LNR and SSSI byelaws if the byelaws duplicate one another (see section 10).

The Department considers that it is possible for parish councils to submit applications for LNR byelaws if the relevant local authority has discharged the correct powers.

2. What is a byelaw?

A byelaw is a law which is made by a statutory body, such as a local authority, under an enabling power established by Act of Parliament. The statutory power to make byelaws only relates to the area of the authority, and byelaws can only have effect within that area. Byelaws create criminal offences and cannot come into force until the relevant Secretary of State has confirmed them.

3. Key features of byelaws

Byelaws have to be within the scope of the enabling legislation. They are subsidiary to national legislation and cannot be in conflict with it. Byelaws must not deal with a matter already precisely covered by statute. Byelaws must also be clear, reasonable and proportionate to the problem they are seeking to resolve.

4. Byelaws related to Dogs

Powers for local authorities and parish councils to make dog byelaws have been replaced with new powers to make Dog Control Orders. Local authorities and parish councils, defined respectively as primary and secondary authorities, can make Dog Control Orders in relation to the following*:

- exclusion of dogs from land;
- dog fouling and removal of dog faeces;
- keeping of dogs on leads;
- putting and keeping a dog on a lead if directed to do so by an authorised officer; and
- restricting the number of dogs that can be taken onto land.

Footnote;

*See section 55(3) & (4) of the Clean Neighbourhoods and Environment Act 2005, and regulation 3(1) of the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (S.I. 2006/1059)

Section 64(1) of the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act), which came into force in England on 6 April 2006, provides that no new dog byelaws can be made in relation to any of the five matters listed above, if at that time (i.e. from 6 April 2006), the authority has the power to make a Dog Control Order in respect of the land and in relation to that matter. Powers to make byelaws affecting dogs can continue to be used, but only in relation to offences that cannot be prescribed in a Dog Control Order.

The prohibition in section 64(1) does not affect any byelaw which the authority had the power to make at the time it was made e.g. dog byelaws validly made prior to 6 April 2006 remain valid until they are amended or revoked. However, if an authority makes a Dog Control Order in respect of an offence on a specified area of land, any existing byelaw made by a primary or secondary authority dealing with the *same* offence on the *same* land ceases to have effect.

Dog Control Orders can be made following the procedure prescribed in regulation 3 of the Dog Control Orders (Procedures) Regulations 2006. The offences (see above) and Order-making forms are contained in the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 (S.I. 2006/798). Dog Control Orders do not need confirmation by the Secretary of State. In addition to other publishing requirements, an authority must, not less than seven days before the DCO comes into force, where practicable, place signs summarising the Order in conspicuous positions on or near the land to which it applies. It would be helpful for such signs to be placed alongside any confirmed and advertised byelaws in the Local Nature Reserve, so that visitors are made aware of both. Where a Dog Control Order replaces dog byelaws, the authority may wish to consider putting up an additional notice to explain the position.

Guidance on dog control orders has been published and is available at www.defra.gov.uk/environment/localenv/legislation/cnea/dogcontrolorders.pdf

We anticipate that most activities related to dogs will be covered by Dog Control Orders. In addition we would expect that most local nature reserves would want to control dog related activities in some way and would therefore as an appropriate authority make a dog control order. Wording in the byelaws reflect this by provision of a footnote to ensure that visitors are aware that dog related offences are covered. In exceptional circumstances you may consider dog related byelaws only if the activities which you wish to control are not covered by the provisions of Dog Control Orders. Please see model byelaw 2(x). It is the responsibility of the byelaw making authority to consider the issues that dogs present on site.

5. The Confirming Authority

LNR byelaws are confirmed by the Secretary of State for Environment, Food and Rural Affairs. The power to confirm byelaws derives from section 236 of the Local Government Act 1972. It allows the Secretary of State to either confirm or refuse to confirm the byelaws.

As the confirming authority the Department has operated on the basis that there is a *de minimis* administrative provision whereby a council could carry out very minor amendments to clarify the byelaws once they have been submitted to the Department for confirmation.

There is however no legal provision for significant amendments which may change the scope of the byelaws and which, if advertised, may cause further representations. Where a byelaw is considered by the Department to be defective or unreasonable, the council may need to go back over some or all of the procedure to correct this.

6. Advice on draft versions

In view of the above section, we strongly advise the council to seek a provisional informal view from the Department for the byelaws in draft form, following the wording of the model at Annex A whilst taking into account local circumstances. Clarification is required if sections of the model byelaws have been excluded or amended. More importantly, if any additional provisions have been made, full details for this inclusion should be given.

7. Conflict, certainty and reasonableness

In order to ensure that councils make byelaws that are clear and consistent nationally and are not in conflict with existing legislation, the Department produces model byelaws. However, it is the application of the model byelaws to local circumstances which will determine whether the byelaw is clear, reasonable and proportionate. For example, it would be unreasonable to impose restrictions on an activity which could not realistically be carried out, e.g. sailing or mooring of watercraft in an area which does not contain any areas of water sufficient in size.

If a byelaw is to be effective it needs to be respected. It is more likely to be respected if it has the support of the majority of the local community. It is also more likely to be effective if the local authority takes active steps to enforce it.

8. The penalty

The maximum penalty under any of these byelaws is set at level 2 on the standard scale, with further fines for each day during which the offence continues after conviction. The actual penalty imposed is a matter for the Courts to decide.

9. Consultation

Although consent from Natural England is not required by statute, the Department expects the Council to seek Natural England's view on the draft byelaws before they are submitted for approval. The Department also strongly recommends that, following consultation with Natural England, informal consultation with local residents, the police and other interest groups should be undertaken, especially if the byelaws are potentially controversial. Natural England should be consulted again after this process if significant changes are proposed to the byelaws.

10. Revocation

Byelaws cannot override any existing right which is already in operation over the land. Any existing byelaw which is duplicated by the introduction of new byelaws must be revoked prior to the confirmation of the new byelaws. The revocation of existing byelaws is a matter for the original confirming authority which will be able to advise on the necessary steps to be taken.

11. Next steps

The next stages (resolution, signing/sealing, advertising/deposit, submission to the Department) must be undertaken in the order detailed below. Councils are reminded that they are making laws and the requirements must be strictly complied with. Deviation from these procedures or failure to follow the correct order may result in delay or rejection at a later stage.

12. Council Resolution

Once the council has obtained advice and provisional approval from the Department, the council should pass a resolution which should state that the council

- (a) (i) Resolved (where the council has a common seal), to authorise the affixing of the common seal to the byelaws: or
(ii) Resolved (where a council does not have a common seal), to authorise the sealing of the byelaws by two named councillors;
- (b) Resolved to authorise the Clerk to the Parish /Town/Community Council (or other named Officer) to carry out the necessary procedures and apply to the Secretary of State for confirmation.

13. Sealing

Once the byelaw making authority has formally resolved to adopt the byelaws, subsection 236(3) of the 1972 Act requires that they should be made under the common seal of the authority. Two identical signed and sealed originals of the byelaws should be produced. The wording should conform to the model wording or any variant agreed in advance by the Department. All manuscript amendments should be initialled by the person who attested the sealing. In the case of byelaws made by a parish or community council not having a seal, the byelaws should be made under the hands and seals of two members of the council.

14. Advertising

After the byelaws have been sealed and at least one month before applying for confirmation of the byelaws, the council should advertise its intention to apply for their confirmation in one or more newspapers circulating in the area to which the byelaws apply (section 236(4) of the 1972 Act). A suggested notice is attached at Annex B. Additionally, a copy of the

byelaws must be held on deposit at the offices of the authority for inspection by the public at all reasonable hours for at least one month after the date of publication of the newspaper containing the notice (section 236(5) of the 1972 Act).

15. Handling representations

The Secretary of State will take into account any representations received when deciding whether to confirm the byelaws. Once the one month period has expired the Department will forward all representations to the council and ask for its comments before any further action is taken. If any representations are sent in error direct to the council, copies should be sent to the Department at the earliest opportunity.

16. Amending byelaws

The council may wish to consider amending the byelaws in the light of objections received. If this is the case, the council will be required to start the process again and inform the Department that the original byelaws have been withdrawn. If the decision to withdraw the byelaws is made prior to confirmation by the Department, there is no need to make a formal public announcement.

If the council decides not to amend the byelaws in spite of representations, then the original byelaws should be submitted to the Department.

17. Submitting the byelaws to the Department

The sealed byelaws may be submitted for confirmation at any time after the month following their advertisement has elapsed. A delay in submitting the byelaws is permissible if the council requires additional time to consider representations. The package to the Department should contain the following:

- Two copies of the sealed byelaws and two copies of the unsealed byelaws, including maps;
- A copy of the relevant page of the newspaper containing the notice;
- Natural England's comments;
- Copies of representations, if any, made directly to the council;
- The council's comments on the representations made.

The maps should clearly show the location of the reserve, including the names of adjacent streets. The extent of the reserve should be clearly defined in red. Footpaths, areas of water and any other distinguishing features should also be clearly defined in different colours on the map.

18. Confirmation by the Secretary of State

The Secretary of State has the power to confirm byelaws only if the procedure laid down in section 236 of the Local Government Act 1972 and outlined above is properly carried out.

Failure to carry out the procedures properly may mean the council has to repeat some or all the stages to correct the error.

The Secretary of State will consider whether to confirm each byelaw individually in the light of any representations made. The Department will write to the council confirming its decision and return one copy of the sealed byelaws, authenticated by the Secretary of State. The other sealed copy will be retained for Departmental records.

19. Date of commencement

The Secretary of State has power to fix the date on which the byelaws come into operation. The first day of a month will usually be most convenient; and as section 236(7) of the 1972 Act provides that, if no date is fixed, byelaws shall come into operation one month after confirmation, the byelaws will normally be brought into operation on the first day of the next month following the expiry of this period.

20. Printing of byelaws

Once the Secretary of State confirms the byelaws, they must be printed in accordance with section 238(8) of the 1972 Act. A copy should be sent to the Department for record purposes. One copy must be deposited at the offices of the council for inspection at all reasonable times without payment. Where the council does not have offices, it must make suitable alternative arrangements. Section 238 also imposes obligations upon councils to send copies of confirmed byelaws to districts and parishes within the county, and corresponding obligations upon district councils to send copies of confirmed byelaws to the county council.

Members of the public are also entitled to purchase a copy of the byelaws. The council will wish to bear this in mind when deciding how many copies of the byelaws should be printed.

21. Further information

If you require any additional information or further clarification, please contact Chris Lewis , Zone 1/12, Temple Quay House, 2 The Square, Bristol BS1 6EB.

If you wish to send in your draft byelaws or questions by e-mail, please send them to Protected.Areas@defra.gsi.gov.uk Please note that map(s) should be sent in **colour**.

ANNEX A – Model Byelaw

.....Council
..... Nature Reserve

The.....Council in exercise of the powers conferred upon them by sections 20¹, 21(4)² and 106³ of the National Parks and Access to the Countryside Act 1949 in accordance with section 236 of the Local Government Act 1972 hereby make the following byelaws for the protection of the Nature Reserve at..... In the Parish (es) or community Parish (es)..... In the County of

1. In these byelaws

a. "The Reserve" shall mean the pieces or parcels of land containing in the whole hectares or thereabouts and situated in the parish (es) or community (communities) Parish (es) of In the County of Declared to be managed as a Nature Reserve by the declaration dated the day of 19..... made by the in pursuance of section 21 of the National Parks and Access to the Countryside Act 1949, and the Reserve is for the purposes of identification shown as nearly as may be on the map annexed to these byelaws and therein edged red.

b. "The Council" shall mean

c. "Firearm" shall have the same meaning as in section 57 of the Firearms Act 1968.

2. Within the Reserve the following acts are hereby prohibited except insofar as they may be authorised by a permit issued by the Council in accordance with Byelaw 5, or are necessary to the proper execution of his duty by an officer of the Council or by any person, or servant of any person, employed or authorised by the Council.

Restriction of Access

(i) Entering at any time those parts of the reserve coloured..... On the attached map; or where notice to keep out has been posted by order of the Council.

(ii) Entering any part of the Reserve during the period beginning on the day of and ending on the Day of In any year.

Damage to or disturbance of things in the Reserve

(iii) Spreading or using any net, or setting or using any lamp or other instrument, or any snare or lure, for the taking, injury or destruction of any living creature.

(iv) Taking, molesting or intentionally disturbing, injuring or killing any living creature.

(v) Taking or intentionally disturbing or destroying the eggs, larvae, pupae or other immature stages, or the place used for shelter or protection of any living creature.

(vi) Intentionally removing or displacing any tree, shrub, plant, fungus or part thereof, or any unfashioned mineral thing including water.

Foot Notes;

¹Amended by Natural Environment and Rural Communities (NERC) Act 2006.
Telecommunications Act 1984, Water Act 1988, and Communications Act 2003.

²Amended by the (NERC) Act 2006

³ amended by the (NERC) Act 2006 and the Environmental protection Act 1990

(vii) Climbing or ascending any tree or climbing or placing a ladder or steps against any tree.

Bringing Animals into the Reserve

(viii) Intentionally bringing, or permitting to be brought, into the Reserve any living creature, or the egg of any living creature, or any plant, or any seed or other part of any plant, in such circumstances that it is likely that such creature or plant will reproduce or propagate itself, or such egg will hatch, or such seed will germinate.

(ix) Bringing into, or permitting to remain within, the Reserve any animal other than a dog⁴, unless it is kept under proper control and is prevented from worrying or disturbing any animal or bird.

(x) Permitting a dog to disturb or worry any animal or bird.

(xi) Turning out any animal or poultry to feed or graze.

Areas of Water

(xii) Committing any act which pollutes or is likely to cause pollution of any water.

(xiii) Bathing or wading in any water in contravention of a notice exhibited beside that water by order of the Council.

(xiv) Water skiing, or ice skating.

(xv) Sailing model boats.

(xvi) Propelling (by any means whatever) any boat on an area or stretch of water other than a public waterway in contravention of a notice exhibited beside that water by the Council.

(xvii) Mooring or leaving or launching any boat elsewhere than on a beach or mooring site indicated by a notice exhibited by the Council as being available for this purpose.

(xviii) Obstructing any flow of any drain or watercourse.

Use of Vehicles

(xix) Driving, riding, propelling or leaving any mechanically propelled vehicle (including hovercraft) elsewhere than on a highway or on a road, or in a place indicated by a notice as being available for the purpose.

(xx) Landing any aircraft except in case of emergency.

(xxi) Launching or landing a hang glider except in an emergency.

(xxii) Operating any hang glider at such height that persons on the ground or in buildings may be inconvenienced or annoyed.

Footnote;

⁴ A dog control order made under the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006 (S.I. 2006/1059) is in effect for [name] Local Nature Reserve.

Use of Certain Equipment

(xxiii) Using any camera or any apparatus for the transmission, reception, reproduction, or amplification of any sound, speech or images by electrical or mechanical means, except apparatus designed and used as an aid to defective hearing and apparatus used in a vehicle so as not to produce sound audible by a person outside the vehicle.

(xxiv) Using any device designed or adapted for detecting or locating any metal or mineral in the Reserve.

Use of Firearms etc.

(xxv) Being in possession of a firearm (with ammunition suitable for use in that firearm) otherwise than on a public paved road, or discharging a firearm or lighting a firework.

(xxvi) Projecting any missile manually or by artificial means.

General Prohibitions

(xxvii) Erecting, occupying or using any tent, shed, caravan or other structure for the purpose of camping elsewhere than in an area indicated by a notice as being available for camping.

(xxviii) Flying any kite or model aircraft.

(xxix) Erecting any post, rail, fence, pole, booth, stand, building or other structure.

(xxx) Neglecting to shut any gate or to fasten it if any means of doing so are provided.

(xxxi) Posting or placing any notice or advertisement.

(xxxii) Selling or offering or exposing for sale, or letting for hire or offering or exposing for letting for hire, any commodity or article, or selling or offering for sale any service.

(xxxiii) (a) Engaging in any activity which is causing or likely to cause a disturbance.

(b) Holding any show, performance, public meeting, exhibition or sports or the playing of any organised games.

(xxxiv) Roller skating, skiing, tobogganing, or skate boarding.

(xxxv) Lighting any fire, stove, heater or other appliance capable of causing a fire, elsewhere than in an area indicated by a notice as being available for camping.

(xxxvi) Letting fall or throwing any lighted match or lighted substance in a manner likely to cause a fire.

(xxxvii) Intentionally leaving items in a place other than a receptacle provided by the Council for deposit of litter or refuse.

3. ♣ SHOOTING (see NB)

The shooting of any bird is prohibited in such area adjoining the Reserve as is described in the schedule to these byelaws.

4. INTERFERENCE WITH DULY AUTHORISED OFFICER

Intentionally obstructing any officer of the Council or any person, or the servant of a person, employed or authorised by the Council in the execution of any works including research or scientific work connected with the laying out, maintenance or management of the Reserve.

5. PERMITS

(i) The Council may issue permits authorising any person to do any act or class of acts within the Reserve or any part thereof which would otherwise be unlawful under these byelaws.

(ii) Any such permit shall be issued subject to the following conditions:

- (a) That it must be carried whenever a visit is made to the Reserve, and produced for inspection when required by a person duly authorised by the Council in that behalf; and
- (b) that it may be revoked by the Council at any time.

6. BYELAWS

These byelaws shall not operate so as to interfere with the exercise –

(i) by a person of –

- (a) a right vested in him/her as owner, lessee or occupier of land in the reserve,
- (b) any easement or profit a prendre to which he is entitled,
- (c) any public right of way.

(ii) Of any functions of a local authority, statutory undertaker or drainage authority.

(iii) By a constable or a member of the armed forces or of any fire brigade or ambulance service of the performance of his duty.

7. PENALTY

Any person who offends against any of these byelaws shall be liable on summary conviction to a fine on level 2 on the Standard Scale and in the case of a continuing offence to a further fine for each day during which the offence continues after the said conviction.

NB The Secretary of State requires evidence of particular need for byelaws marked ♣

ANNEX B – Example Notice

THE [*Name of Council*] CONFIRMATION OF BYELAWS

Notice is hereby given that the [*Name of Council*] intend after the expiry of the period mentioned below, to apply to the Secretary of State for the Environment, Food and Rural Affairs for confirmation of byelaws made by the Council for the protection of the [*Name of Nature Reserve*] [*Location*]

Copies of these byelaws will be kept at the offices of the Council at [*Address of offices of deposit*] and will be open to public inspection without payment on any week day during the usual office hours, for one month from the date of the publication of this notice. Copies of the byelaws or any part thereof will be supplied at a fee of [].

Any representation to the confirmation of the byelaws should be made by letter addressed to the Department for Environment Food and Rural Affairs, National Designated Sites Team, Protected Areas Group, Zone 1/06, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB within one calendar month from the publication date of this advertisement. Where representations are received, copies may be forwarded to the byelaw making authority for their comments before any decision is taken on whether the byelaws should be confirmed.

If you do not want your representation - including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response. Please explain why you need to keep details confidential. Your reasons will be taken into account if someone asks for this information under freedom of information legislation. But, because of the law, it is not possible to promise that those details will always be kept confidential.

Signed :[]
[*eg Senior Solicitor*]