



Office of the
Deputy Prime Minister

Creating sustainable communities

Local Authority Byelaws in England: A Discussion Paper

Procedures for making, confirming and
enforcing byelaws

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Introduction

1. This Paper invites ideas and views on how to improve and make less bureaucratic the procedures for making and confirming local authority byelaws in England. It also considers the issues relating to the enforcement of local byelaws and identifies options for providing more effective and proportionate means of local enforcement than are currently available.
2. The key issues are:
 - the Secretary of State's role in confirming byelaws;
 - local consultation on proposals for new byelaws;
 - how to respond where there are substantive local objections to a proposed byelaw, including rights of appeal; and
 - alternatives to enforcing byelaws through the Magistrate's Courts.
3. This is a discussion paper in the *local:vision* series. In the light of views and responses to this Paper the Government will consider making proposals for the reform of byelaw-making procedures. It is intended to include any such proposals in the Local Government White Paper that is planned for the middle of the year.
4. While this Paper is primarily concerned with byelaws made by local authorities, it also invites comments on byelaws which are made by private sector organisations, for instance byelaws made by transport operators and confirmed by the Secretary of State for Transport. We would welcome views on the specific issues which might arise in providing for appropriate local consultation, scrutiny and enforcement of these byelaws.

The wider context

Removing unnecessary consents

5. The joint Cabinet Office/ODPM Report *Consent Regimes: Reducing Unnecessary Bureaucracy* (published 9 March 2006 – available at www.odpm.gov.uk/pub/72/ConsentRegimesReducingUnnecessaryBureaucracyPDF512Kb_id1164072.pdf) set out 47 consent regimes – a process whereby a local authority has to apply for permission from a Secretary of State before it can take action on local issues – overseen by a range of Government Departments. For each of these consents the report proposed that action should be taken to give local authorities more freedom to take local decisions and free up valuable staff time by either modifying, repealing or reviewing them.
6. The Report included a commitment to review the local authority byelaw-making process, with a particular emphasis on assessing the value of the Secretary of State's role in confirming byelaws.

Cleaner, safer, greener communities

7. Empowering local people to influence decisions which affect their local area is a high priority for the Government. Local communities should be able to tackle issues relating to public spaces which contribute to poor quality environments or unnecessarily prevent positive uses of public spaces. We recognise that in some circumstances local byelaws might be a useful way of dealing with such issues. But for this to be successful the byelaw-making process needs to be straightforward and, once made, byelaws must be able to be effectively enforced.

Better enforcement

8. A criticism which has been made by some about local authority byelaws is that they can be difficult to enforce and, particularly, that action through the Magistrates Courts can be onerous and time consuming. We want local authorities and the communities they serve to have greater confidence that those who do not observe local byelaws can be brought to account quickly and effectively. The Government's Respect Action Plan (www.homeoffice.gov.uk/documents/respect-action-plan?view=Binary) included a commitment to review fixed penalty notices to ensure that the regime works as effectively as possible. This Paper invites views on the merits or otherwise of introducing fixed penalty notices for byelaws offences.

Byelaws today

What they are. What they achieve. How they are made.

9. A byelaw is a law which is made by a body, such as a local authority, under an enabling power established by an Act of Parliament, and which has been confirmed by the Secretary of State. Byelaws generally require something to be done or not to be done in a particular location and are accompanied by some sanction or penalty for their non-observance. If validly made, byelaws have the force of law within the areas to which they apply. Unlike other forms of primary legislation, they can also be challenged in the courts (including during the course of prosecution).
10. Byelaws are not normally considered to be a suitable regulatory mechanism in cases where there are express powers in primary legislation for dealing with an issue. Where there are no such powers, byelaws should be considered only when all other avenues, such as voluntary schemes, have been exhausted.
11. As a general principle, it is for a local authority to decide the necessary and appropriate byelaws for its area. However, local authorities are expected to consult any interested parties and consider their views before making and advertising byelaws.

Available byelaw-making powers

12. The enabling powers under which byelaws are confirmed by the First Secretary of State – and, therefore, which the **Office of the Deputy Prime Minister (ODPM)** oversees – and the topics they address are:

Power	Subject matter
Section 235 of the Local Government Act 1972	Good rule and government and the prevention of nuisances. This includes climbing on bridges, skateboarding, and riding on verges
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds
Sections 12 and 15 of the Open Spaces Act 1906	Open spaces; burial grounds
Sections 82 and 83 of the Public Health Acts Amendment Act 1907	Use of the seashore and promenades, including bait-digging, fishing, horse-riding, and interference with life-saving equipment
Section 231 of the Public Health Act 1936	Public bathing
Section 60 of the Food Act 1984	Markets, including operating hours, maintaining cleanliness, preventing obstruction, use of water taps and prevention of fires
Section 75 and 77 of the Public Health Act 1961, as amended by Section 22 of the Local Government (Miscellaneous Provisions) Act 1976	Amusement premises; pleasure fairs; hairdressers and barbers

13. The Secretaries of State for a number of other Government departments also have confirming powers for byelaws:
14. **The Department for Environment, Food and Rural Affairs (DEFRA)** has responsibility for byelaws on countryside recreation, for local nature reserves and to address dog fouling, although these byelaws are being replaced by dog control orders (see paragraph 34).
15. Last year DEFRA conducted a consultation exercise (consultation paper available www.defra.gov.uk/corporate/consult/recreation-byelaws/consult.pdf; published on 2 August 2005) on streamlining the process for making byelaws relating to countryside recreation and ensuring that they are necessary and fit for purpose. DEFRA has previously considered the Secretary of State's confirmation powers and overall felt that there was a need to retain the role so that, where there is disagreement, an informed decision can be made with all parties having the opportunity to present their arguments. Byelaws relating to countryside recreation can raise controversial issues and significant debate. An example was a proposed byelaw on speed limits applying to vessels on Lake Windermere which raised substantial debate and necessitated a public inquiry.
16. **The Department for Transport (DfT)** has policy responsibility for byelaws relating to railways and other guided transport systems, ports and harbours, airports, bridges and tunnels, walkways and taxis. There is a national set of byelaws in operation for the rail network. These may be enforced by any rail operator defined in the byelaws. Section 46 of the Railways Act 2005 has transferred the powers to make byelaws to the railway operators, and these are subject to confirmation by the Secretary of State. In view of the special national considerations which apply to railways byelaws, DfT has no plans to review the Secretary of State's role.
17. Further details on the other byelaws which DfT oversees are set out below:
- *Walkway byelaws*
The Secretary of State for Transport is responsible for confirming byelaws made under section 35 of the Highways Act 1980 by a local highway authority or a district council to regulate matters such as: the conduct of persons using a walkway; the times at which a walkway may be closed to the public; and the placing or retention of anything (including any structure or projection) in, on or over a walkway.
 - *Airports*
Airport byelaws are made under Part VI of the Airports Act 1986, Sections 63, 64 and Schedule 3. Some 40 or so airports in England, Wales and Scotland currently have byelaws confirmed under section 63(5) of the Airports Act 1986, allowing the airport operator to regulate the use and operation of the airport and the conduct of persons while within the airport. They cover such matters as lost property, regulation of advertising, regulation of vehicular traffic in areas where road traffic enactments do not apply, including car parking and areas where taxis may ply for hire. They may also be used to regulate behaviour, preserve order and restrict or prohibit access to any part of the airport¹.
DfT has prepared a set of model byelaws to assist airport operators.

¹ The control of access to restricted zones within airports is regulated under other aviation security legislation.

- *Hackney carriages (taxis)*

The Secretary of State for Transport has responsibility for confirming byelaws made by a local authority under section 68 of the Town Police Clauses Act 1847, as incorporated with the Public Health Act 1875, to regulate hackney carriages and the conduct of their drivers and proprietors. DfT has made available guidance and a set of model byelaws to assist local licensing authorities.

- *Omnibuses*

The Secretary of State confirms byelaws made by local authorities under Section 6 of the Town Police Clauses Act 1889, as incorporated with the Public Health Act 1875 in relation to horse drawn omnibuses.

- *Transport in London*

Under paragraph 26 of Schedule 11 of the Greater London Authority Act 1999, Transport for London has powers to make byelaws for any of its railways. Byelaws, made under previous legislation, already exist for London Underground and the Docklands Light Railway. Separate byelaws also exist for the Croydon Tramlink, made under Section 46 of the Croydon Tramlink Act 1994.

- *Guided transport systems other than railways*

There are a number of byelaw-making powers related to local light railways and tramways. Examples of relevant legislation are Section 59 Leeds Supertram Act 1993, Section 46 Croydon Tramlink Act 1994, Paragraph 26 of Schedule 11 of the Greater London Authority Act 1999 and Section 62 Greater Nottingham Light Rapid Transit Act 1994. Byelaw-making powers are also included in a number of local acts and Transport and Works Act Orders.

- *Ports and harbours*

DfT will shortly issue a port policy review consultation paper which will include options for reforming, including through deregulation, the current system for making harbour byelaws. We shall feed into that exercise relevant comments received on this Paper.

18. Some of these byelaws are made and enforced by transport operators (most of which are in the private sector) rather than by local authorities. We recognise that special considerations apply to these. Some may take the view that, as private companies are not accountable to the local electorate in the same way as local authorities are, the Secretary of State's for Transport's role in confirming byelaws should be retained. We would welcome comments on the particular issues that may arise in respect of specific transport-related byelaws.

19. **The Department for Culture, Media and Sport** has responsibility for byelaws relating to public libraries under the Public Libraries and Museums Act 1964. These byelaws define acceptable behaviour inside libraries and museums. The requirements that need to be followed are set out in section 236 of the Local Government Act 1972.

20. Control of Trafalgar Square and Parliament Square was handed over from the Department for Culture, Media and Sport to the Greater London Authority (GLA) on 1 October 2000. However, any byelaws made by the GLA under section 385 of the Greater London Authority Act 1999, relating to either Trafalgar Square or Parliament Square Gardens, must currently be confirmed by the Secretary of State for Culture, Media and Sport.
21. **The Home Office** has responsibility for byelaws relating to the consumption of alcohol in public places. However, legislation under the Criminal Justice and Police Act 2001 is replacing byelaws with powers which do not require the approval of the Secretary of State. Byelaws related to drinking in public will therefore cease to have effect from 1 September 2006 (see paragraph 33 below).
22. **The Department of Health** has policy responsibility for byelaws relating to the practice of acupuncture and businesses providing tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis under Part VIII of the Local Government (Miscellaneous Provisions) Act 1982.

The byelaw-making process

23. Before any byelaws can come into force they must first be confirmed by the relevant Secretary of State. The rationale for this has been that, as byelaws create criminal offences, they should be subject to scrutiny by central government.
24. The degree of central scrutiny of draft byelaws has been reined back over recent years. For instance, ODPM now focuses on the following points:
- whether the proposed byelaws are intra vires, and that any action required by legislation such as consultation with another public body, has been undertaken;
 - that they do not duplicate or conflict with general law, existing byelaws or a relevant local Act;
 - that they address a genuine and specific local problem and do not attempt to deal with national issues; and
 - that they do not conflict with Government policy.
25. If the draft byelaws satisfy the above points, ODPM notifies the local authority that they can proceed to make and seal the byelaws and to advertise in the local press the fact that the byelaws are to be sent to the Secretary of State for confirmation. The advertisement should also state that objections to the confirmation of the byelaws can be made to the Secretary of State. The byelaws must also be made available for public inspection by the authority for at least one month before they are sent for confirmation.
26. ODPM does occasionally receive objections to byelaws, which are referred to the local authority for their comments. This does not, in practice, provide a clear or effective procedure for people to appeal to ODPM against byelaws. We take the view that, in most cases, local authorities should be able to resolve disputes about proposed new byelaws locally. Generally speaking, local authorities have the local

knowledge and expertise to decide where and how byelaws should be applied. Therefore, we do not intervene in disputes unless objections raise substantive points of law or national policy.

27. If no substantive objections are received, the sealed byelaws are confirmed by officials under authorisation on behalf of the Secretary of State. Byelaws can only come into force if they have been confirmed.

Reviewing the byelaw process

28. Despite measures introduced over the years which were designed to streamline the byelaw-making process it seems to us that the procedures for making byelaws remain overly bureaucratic, and that there may be little justification for central government to continue to participate directly in what is, for the most part, very much a local matter. We now consider that, in some circumstances, the time may be right to further reduce central government's part in the byelaw-making process.
29. The Department for Environment, Food and Rural Affairs recently conducted a review of byelaws relating to the countryside (consultation paper at www.defra.gov.uk/corporate/consult/recreation-byelaws/index.htm published August 2005). This included proposals for guidance for byelaw-making authorities on the processes leading up to and including an application for confirmation by the Secretary of State, the review of model byelaws, and the placing of increased emphasis on the active assessment by byelaw-making authorities of whether there are alternative means of ameliorating the problems which the proposed byelaws seek to resolve. The consultation responses were strongly supportive and DEFRA is implementing these streamlining measures. DEFRA is, however, retaining the Secretary of State's role in confirming byelaws on countryside recreation.
30. As noted in paragraph 15, countryside byelaws can be controversial, have wider implications and raise national issues. However, the vast majority of local authority byelaws address very localised and specific issues. Within the general framework model byelaws and guidance which central government would continue to maintain, there could be a case for enabling local authorities to make byelaws without direct reference to central government. It should be an authority's responsibility to ensure that it is acting within its powers and that the byelaws are properly drafted and made. Any challenge to the legality of byelaws is ultimately a matter for the Courts.
31. Some people might take the view that the current operation of the Secretary of State's powers to confirm byelaws provides a useful check on the soundness and legality of local authorities' proposals. However, options below for improved local consultation and guidance could mitigate concerns about reducing central government's role. The withdrawal of the Secretary of State's confirming powers could emphasise local ownership of the process, and local authorities' responsibility to act on behalf of local people.
32. ODPM and the other Government Departments which have policy responsibility for byelaws as set out in paragraphs 17 – 22 would welcome views on the options for change in this Paper, both in general terms and with reference to specific byelaws.

Q1 Does the central confirmation of byelaws add any value to the byelaw making process? If so, how?

Q2 Are there reasons why, for some or all of the byelaws mentioned in paragraphs 12 and 17– 22 above, the Secretary of State's role should be retained? If so, why?

Options for the future

Alternatives to byelaws

33. Some of the enabling powers for byelaws are enshrined in some very old legislation. Although this does not necessarily mean that the legislation is no longer of some use, the procedures set out for making, confirming and enforcing byelaws do not sit well with modern government and with initiatives for local communities to work in partnership to improve public spaces and tackle anti-social behaviour swiftly and effectively. As noted in paragraphs 14 and 21, some Departments have developed alternatives to byelaws. These have a similar outcome in regulating unacceptable behaviour but have been developed to provide simpler, clearer and more flexible procedures:

- *Alcohol control zones*

The Home Office is phasing out byelaws relating to drinking alcohol in public places and replacing these with a power for local authorities to introduce alcohol control zones. These powers enable local authorities to designate areas to restrict the public consumption of alcohol and for the police to confiscate alcohol in open or sealed containers from adults in designated areas and young people in public places, where the police reasonably believe that they intend to consume alcohol. It is also an arrestable offence to fail, without reasonable excuse, to comply with the police officer's request.

These measures are more straightforward and speedier to introduce than byelaws, while ensuring that there remains an appropriate level of consultation before areas can be designated as alcohol control zones, and will help to ensure greater consistency and improved enforcement.

As part of the process of introducing alcohol control orders, local authorities should first make an assessment about the level of the anti-social drinking and disorder in areas proposed for designation. Local partnership groups and the police may be able to provide some level of evidence or history about the extent of the disorder or nuisance in these areas.

The level and detail of the assessment and evidence required is not as extensive as previously required for establishing a byelaw. However, local authorities will have to be satisfied that the proposed area for designation has a history of anti-social drinking and disorder.

Once the local authority is satisfied with the assessment and evidence gathered on the proposal they should consult the police, any parish or community councils, licensees, land owners or occupiers and receive representations about areas that will be affected by the designation order.

It may be impractical to consult individually with all land owners and occupiers in the proposed area, therefore public consultation notices in the local press would be acceptable as part of the process.

Before making an order, the local authority should publish in the local press, a notice identifying areas proposed for designation; set out the effect of an order being made in relation to that place; and invite representations as to whether or not an order should be made.

Local authorities should not make an order until at least 28 days after the publication of the notice. Once the process is complete, the local authority should make an order under 13(2) of the Criminal Justice and Police Act 2001. The Order should include all areas affected by it and the date it came into effect. A copy of the order should be sent to the Home Office. Further information is at www.crimereduction.gov.uk/alcoholorders01.htm

- *Dog Control Orders*

34. From 6 April 2006, Dog Control Orders made under the Clean Neighbourhoods and Environment Act 2005 will replace byelaws relating to dogs. These powers enable local authorities to apply dog control orders to particular areas of land. There are five different offences for which dog control orders can be made: failing to remove dog faeces; not keeping a dog on a lead; not putting and keeping a dog on a lead when directed to do so; permitting a dog to enter land from which it is excluded; and taking more than a specified number of dogs onto land. The orders do not require the consent of the Secretary of State. It will be an offence not to comply with dog control orders, punishable by a maximum fine of £1,000 and fixed penalties which local authorities are able to set within a prescribed range. The two consultation exercises undertaken by DEFRA on deregulating or streamlining dog-related byelaws indicated that the procedures for making these byelaws were seen as complicated and burdensome, tying up staff resources in both local and central government. There was widespread support for this simpler, streamlined approach.

- *Airport Conditions of Use*

35. Airports also have the option of regulating the activities of airlines, pilots and other air crew, through contractual Conditions of Use, rather than through byelaws. These can be enforced through surcharges as part of airport's user charging system, so are relatively easy to administer and avoid the Magistrates Courts.

- *National enforcement processes*

36. The Clean Neighbourhoods and Environment Act also introduced a range of enhanced powers to deal with fly-tipping, litter, fly-posting, abandoned vehicles, noise and graffiti. Some of these matters, in the distant past, could be tackled with local byelaws before the introduction of successive pieces of tailored, national legislation. The Clean Neighbourhoods and Environment Act builds on existing enforcement powers to make greater use of fixed penalty notices. It also makes it an offence to drop litter anywhere and enables local authorities to restrict the distribution of flyers, handouts and pamphlets that can end up as litter. It gives authorities new powers to deal with burglar alarms and flexibility to tackle other noise nuisances.

37. The development of simpler, more straightforward processes involving control orders and fixed penalty notices might be seen to point the way to modernising the whole approach to the enforcement of good rule and government which is currently addressed with byelaw-making powers. A modern process for tackling a range of unacceptable behaviour and enforcing general standards of conduct, essentially based on people having respect for themselves and others, might be through a new "community respect order". Such an approach would enable communities, through democratically-elected councils, to set out in such orders the anti-social behaviour deemed unacceptable in the communities' public spaces, and could be simply and straightforwardly enforced through fixed penalty regimes.

Such an approach, which would require primary legislation, could replace the whole of the byelaw-making regime for good rule and government. This could rationalise the enforcement of a wide range of nuisances currently tackled by ODPM's model byelaw number 8, reproduced at Annex A.

Q3 Does the byelaw-making process have any benefits compared to the control orders outlined in paragraphs 33 and 34?

Q 4 Could a single "community respect order" replace the current range of byelaws which are available to tackle anti-social behaviour?

Model byelaws and other guidance

38. To help speed up the byelaw-making process, and to eliminate errors in drafting which may render byelaws invalid, ODPM and other Departments make available electronically sets of model byelaws and guidance (ODPM models and guidance on the range of subjects paragraph 12 at www.odpm.gov.uk/index.asp?id=1133678). For byelaws which do not follow one of these models, ODPM also provides a form of "checklist" to help ensure that local authorities have covered the necessary procedural requirements (reproduced at annex B). We would be grateful for views on whether this checklist is helpful to the process of preparing byelaws to ensure that they are valid, reasonable, certain, consistent with general law and within the powers of the authority making them.

39. As the amount of central guidance on byelaws has increased, the case for retaining a central role in confirming byelaws appears to us to have diminished. If the Secretary of State's role in confirming byelaws were to be repealed, the existing model byelaws sets could be maintained, updated to reflect emerging trends and possibly supplemented, for example, with further guidance on good practice in conducting local consultation on proposed new byelaws.

40. We are conscious that, relatively speaking, central Government has played an active part in providing to local authorities informal advice and guidance on practical issues relating to byelaws – particularly to parish councils. The scaling-down of this involvement may mean that some local authorities will need to build up skills and capacity on this issue. This could be achieved by the encouragement of cooperative and joint working by authorities. This could provide benefits in terms of local authorities sharing experience and expertise to improve authorities' capacity to deal with byelaws, or providing powers to principal authorities to advise parishes or undertake parishes' role in making byelaws.

Q5 Would there be value in ODPM and other departments continuing their role in providing guidance? If so how could current guidance on making byelaws be improved?

Q6 Would some form of capacity building and information forum be of benefit to local authorities and parish councils? If so, what is the most effective vehicle for this?

Q7 Should principal authorities play some role in relation to byelaws made by parish councils? If so, what should that role be?

Local consultation on byelaws

41. There is currently no statutory requirement for local authorities to consult on proposed byelaws. The new control orders which are in some cases replacing byelaws explicitly provide for local consultation and thorough appraisal. It is clearly important, particularly if central Government's role is reduced or removed for some byelaws, that thorough consultation is established as a pre-requisite for the introduction of new byelaws.
42. It may be appropriate to introduce a two-stage process on assessment and consultation which local authorities should follow before adopting byelaws. The first stage would require a local authority to determine whether a byelaw is the most appropriate way of addressing the perceived problem. We consider it essential that the local authority should adopt a rigorous assessment of the need and fitness for purpose of a proposed byelaw. This would reflect current procedures whereby a local authority submits to ODPM a proposal for a byelaw which does not follow one of our models.
43. However, instead of referring the assessment to ODPM, it could be made publicly available by the authority as part of its consultation. In this way the people and organisations which the authority were consulting about a proposed new byelaw would have access to a clear and explicit rationale for action which would inform their consideration of the issues.
44. For the consultation stage of the process, we suggest that, as a minimum the local authority could:
- Notify local people of the proposed byelaw, making available the information covered by the assessment of need;
 - Provide opportunities for inspection of the text of the proposed byelaw, at council offices and in public notices;
 - Enable local people to comment on the byelaw; and
 - Provide the opportunity for debate in a public forum locally.
45. This procedure is designed to ensure a consistent, robust and fully informed process is used to determine whether a byelaw is appropriate, and to enable proper consultation with those who would be affected by the proposed byelaw. While byelaws can ultimately be challenged in the Courts, it is important that authorities' byelaw-making procedures are rigorous and based on their own legal advice.

Q8 Does the process outlined above provide for appropriate consultation arrangements for local communities and interest groups? Are there any further measures which could usefully provide for consultation with local people?

Q9 Should byelaws continue to be advertised in local newspapers? Are there more effective means of advertising them?

Disputes and Appeals

In the course of the byelaw-making process

46. On rare occasions, a proposed byelaw may be particularly controversial, meet with substantial local opposition and raise issues which go beyond local concerns. In some circumstances, there may be benefits in providing a mechanism for reference to the Secretary of State. There may, in particular, be a case for the Secretary of State to intervene in disputed byelaws proposed by private sector transport operators which are not locally accountable in the same way as local authorities.
47. However, the new control orders set out in paragraphs 33 and 34 which are replacing byelaws on the consumption of alcohol in public places and dog fouling do not include a right of appeal to central government. Where a sufficiently robust framework of legislation and guidance is in place, we consider that central scrutiny of new byelaws may no longer be necessary. Comprehensive guidance and sets of model byelaws on most topics have been made available by Government Departments. If properly considered by authorities, this should rule out the need for further input by central Government.
48. We consider that the very local nature of byelaws means that, provided appropriate consultation with the local communities and reference to relevant central guidance takes place, there should be no overriding need for an appeal mechanism to the Secretary of State. To do so would negate the benefit gained from repealing the Secretary of State's role in confirming byelaws.
49. We would welcome views on whether the benefits or otherwise of the Secretary of State retaining a role in this process, as well as suggestions for appropriate alternative bodies to consider appeals. In particular, if cooperative and joint working between authorities mentioned at paragraph 40 can be pursued, it might be possible, for example, for appeals against parish byelaws to be heard by a principal authority, or another parish, or by a sub-committee of the byelaw-making authority itself.

Against confirmed byelaws and the penalties they impose

50. As with other day to day operational decisions made by local authorities, we consider that challenge against penalties imposed should continue to rest with the Courts. With the availability of guidance and robust consultation and scrutiny in place, such occurrences should be rare. Ultimately, the Courts can strike down a byelaw if it is found to be ultra vires or unreasonable.

Q10 Is there a case for a mechanism for referring disputed byelaw proposals to central Government if there are significant objections to a proposed byelaw?

Q11 Could other authorities or bodies or another part of the byelaw-making authority perform this role?

Activities which byelaws should not address

51. ODPM guidance to local authorities advises that the following activities are relatively trivial nuisances and so are not normally considered to warrant criminal sanction. Therefore, the First Secretary of State would not normally be prepared to confirm byelaws on these matters:

- Filming, video-recording, taking of photographs
- Glue sniffing
- Loitering
- Persistent canvassing and leaflet distributing
- Pigeon feeding
- Spitting

52. We are aware that there are a number of transport byelaws, confirmed by the Secretary of State for Transport, which do regulate some of these activities for good reasons. Furthermore, amended Trafalgar Square and Parliament Square Gardens Byelaws made in 2002, and confirmed by the Secretary of State for Culture, Media and Sport, banned the feeding of pigeons because this was causing significant environmental and other problems in an important tourism location. Strong views were expressed both for and against the introduction of these byelaws.

53. If comments on this Paper suggest that repealing the Secretary of State's role in confirming byelaws would be welcome, and that responsibility for introducing byelaws should rest entirely with local authorities, the question arises as to whether these activities should continue to be excluded unless there are exceptional circumstances, or whether it should be for local authorities to take an informed decision based on local demand and local circumstances. It would be consistent with the theme of increasing local ownership of the byelaw process to allow authorities to make their own decisions on the content of byelaws.

Q12 Should certain activities continue to be expressly excluded from enforcement action through the use of byelaws and for what reasons?

Q13 Should the decision on the content of byelaws be a matter for authorities?

Enforcement

54. An important principle underpinning byelaws is that the activities and behaviour which they are designed to regulate are unacceptable to the extent that they warrant the creation of a criminal offence. Byelaws are currently enforced through the Magistrates Courts, with fines ranging from £200 to £2,500. Enforcement by this means can be a time-consuming and resource intensive process.

55. It is also out of keeping with current anti-social behaviour and environmental initiatives, such as the control orders referred to in this Paper which provide for fixed penalty notices leading to on-the-spot fines enforced by the local authority.

56. Byelaws can be enforced by local authority officers, the relevant transport operators, community support officers, as well as by police officers. The low level of cases brought to Magistrates Courts suggests that byelaws are not being enforced rigorously and effectively.
57. We consider that legislation which would allow byelaws to be enforced through an alternative means, such as fixed penalty notices, would significantly improve the enforcement of byelaws. The Respect Action Plan includes a commitment to review fixed penalty notices, including penalty notices for disorder. As described in paragraph 37, recent modernising developments point towards an option of rationalising current byelaws for good rule and government through a “community respect order” regime. Even in advance of such a regime, there appears to be a strong case for a simpler means of enforcing byelaws through fixed penalty notices.
58. Experience has shown that where authorities have been able to retain receipts from fines, there is an incentive to devote resources to enforcement activity to ensure local rules are respected.
59. We would be pleased to hear local authorities’ and others’ views on whether amending legislation to enable enforcement of byelaws through fixed penalty notices would be a welcome step, and whether it would support more effective and quicker enforcement action against inappropriate behaviour.

Q14 Should the means of enforcing byelaws be amended, so that they were no longer subject to action in the Magistrates Courts, but would instead be liable to fixed penalty notices?

Local awareness of byelaws in force

60. To maintain public support for byelaws, those in force will need to be appropriately publicised. People must be kept properly informed of the byelaws which are in operation, particularly if changes are made to the enforcement of byelaws, for instance, through the use of on-the-spot fines. This is especially the case if they are visitors to an area. However, ODPM is also concerned to ensure that signage requirements relating to byelaws do not detract from the visual quality of open spaces. It is ODPM’s view that local authorities should be responsible for decisions relating to publicity about byelaws.

Q15 How can awareness of byelaws in force in open areas be made without adding to street clutter?

Repealing obsolete byelaws provisions

61. We are aware of a number of obsolete provisions relating to byelaws. For example, section 52(2) of the Public Health (Control of Disease) Act 1984 which provides a byelaw making power in relation to preventing the spread of infectious disease by the occupants or users of tents, vans, sheds and similar structures. The Department of Health (DH) understands that no use has been made of the byelaw-making power in section 52(2) and it is not clear that the power is of any practical use. DH therefore propose that it should be repealed. We would welcome views on this and other examples of byelaw-making powers which appear to have outlived their purpose.

62. Byelaws made under section 8(1)(d) of the Local Government Act 1894 cannot be revoked by byelaws made under any other enactment. They can only be revoked by central Government by an Order under section 262(8)(d) of the Local Government Act 1972. We consider that this anomaly should be remedied so that it is entirely in local authorities' hands to decide whether to repeal byelaws where they have become obsolete or have been overtaken by national legislation or alternative means of control.
63. We propose, in the interests of avoiding obsolete local byelaws that, when new byelaws are made, a timescale for review should be included. This will ensure that byelaws remain relevant and fit for purpose.

Q16 Should new byelaws include a timescale for review? What should the timescale be?

Resource issues

64. We take the view that a move to reduce central government input to the byelaw-making process should not have staff resource implications for principal authorities, as they have already been undertaking their responsibilities for byelaw work in accordance with the legislation. Furthermore, possible repeal of the requirement to refer proposed byelaws to central Government would remove a layer of bureaucracy for authorities.
65. We recognise that there may be a more substantive impact on parish councils and we would like to hear views on this. Paragraph 40 of this paper suggests measures to encourage cooperative and joint working between parish councils and principal authorities, including support from principal authorities to parish councils in order to mitigate any impact on parishes.
66. Any firm proposals to amend the byelaw-making process would be subject to scrutiny arrangements in accordance with the new burdens doctrine.

Your views

We would welcome your views on the issues covered by this discussion paper and any other comments and suggestions you may have.

Questions

The specific questions which feature throughout the text of this paper are reproduced below for ease of reference:

Q1 Does the central confirmation of byelaws add any value to the byelaws making process? If so, how?

Q2 Are there reasons why, for some or all of the byelaws mentioned in paragraphs 12 and 17 – 22 above, the Secretary of State's role should be retained? If so, why?

Q3 Does the byelaw-making process have any benefits compared to the control orders outlined in paragraphs 33 and 34?

Q4 Could a single "community respect order" replace the current range of byelaws which are available to tackle anti-social behaviour?

Q5 Would there be value in ODPM and other departments continuing their role in providing guidance? If so how could current guidance on making byelaws be improved?

Q6 Would some form of capacity building and information forum be of benefit to local authorities and parish councils? If so, what is the most effective vehicle for this?

Q7 Should principal authorities play some role in relation to byelaws made by parish councils? If so, what should that role be?

Q8 Does the process outlined above provide for appropriate consultation arrangements for local communities and interest groups? Are there any further measures which could usefully provide for consultation with local people?

Q9 Should byelaws continue to be advertised in local newspapers? Are there more effective means of advertising them?

Q10 Is there a case for a mechanism for referring disputed byelaw proposals to central Government if there are significant objections to a proposed byelaw?

Q11 Could other authorities or bodies or another part of the byelaw-making authority perform this role?

Q12 Should certain activities continue to be expressly excluded from enforcement action through the use of byelaws and for what reasons?

Q13 Should the decision on the content of byelaws be a matter for authorities?

Q14 Should the means of enforcing byelaws be amended, so that they are no longer subject to action in the Magistrates Courts, but would instead be liable to fixed penalty notices?

Q15 How can awareness of byelaws in force in open areas be made without adding to street clutter?

Q16 Should new byelaws include a timescale for review? What should the timescale be?

Comments should be sent by email or post to:

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Comments and views received before June 2006 will help to inform the content of a White Paper on the future of Local Government but we would also welcome comments after this date.

Annex A

MODEL BYELAWS – SET 8

[Name of Council]

BYELAWS FOR GOOD RULE AND GOVERNMENT

ARRANGEMENT OF BYELAWS

1. General interpretation
2. [Application]
3. [Application]
4. [Application]
5. Riding on road margins and verges
6. Vehicles on road margins and verges
7. Skateboarding etc [- to prohibit skateboarding in designated areas]
8. Skateboarding etc [- to prohibit dangerous or nuisance skateboarding on footpaths and roads]
9. Fairground attractions causing obstruction to traffic
10. Dangerous games near highways
11. Playing games on highways to the annoyance of local residents
12. Touting
13. Urinating, etc
14. Interference with road warning equipment
15. Interference with life saving equipment
16. Climbing upon and hanging from bridges
17. Penalty
18. Revocation

SCHEDULE [1]

SCHEDULE [2]

Byelaws made under section 235 of the Local Government Act 1972 by *insert name of Council* for the good rule and government of the [Borough/District] of *insert name* and for the prevention and suppression of nuisances.

General interpretation

1. In these byelaws:

Select from the following list only terms to be used in the model byelaws which the Council proposes to adopt:

“carriageway” means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

“the Council” means *insert name of Council*;

“designated areas” means those areas designated in [byelaw 3/byelaw 4(3)] to these byelaws;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

“highway” means the whole or a part of a highway other than a ferry or waterway;

“road margin or verge” means land which is—

(a) adjacent to the carriageway of a highway [or between two carriageways of a highway], other than the carriageway of a trunk road vested in the Secretary of State, and

(b) laid or sown with grass or planted with trees, shrubs or plants, and mown or otherwise maintained in an ornamental condition by the Council;

“self-propelled vehicle” means a vehicle other than a cycle, wheelchair or pram which is propelled by the weight or force of one or more persons skating, sliding or riding on the vehicle or by one or more other persons pulling or pushing the vehicle;

“trunk road” means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 of the Highways Act 1980 or by virtue of an order or direction under section 10 of that Act.

Application

Councils should adopt ONE of model byelaws 2, 3 and 4

2. These byelaws apply throughout the [Borough/District] of *insert name*.
3. These byelaws apply to the areas of *insert name of local authority area* designated in [the Schedule] [Schedule 1] [and delineated by black hatching on the plan attached to these byelaws].
4. (1) These byelaws shall apply throughout the [Borough/District] of *insert name* except as set out in byelaws [4(2) to 4(4)].
(2) Byelaws 5 and 6 apply to any road margin or verge which is indicated to be a road margin or verge to which these byelaws apply by means of a

notice conspicuously displayed on or near the said road margin or verge.

- (3) Byelaw 7 applies to the areas of *insert name of local authority area* designated in [the Schedule] [Schedule 1] [and shown hatched in black on the plan attached to these byelaws].
- (4) Byelaw 16 applies to the bridges listed in Schedule [2].

Riding on road margins and verges

5. No person shall without lawful authority ride or lead any horse, or cause any horse to be ridden or led upon any road margin or verge to which this byelaw applies.

Vehicles on road margins and verges

6. (1) No person shall without lawful authority drive, park or leave a vehicle or cause such a vehicle to be driven or placed upon any road margin or verge to which this byelaw applies.
- (2) This byelaw does not apply to a heavy commercial vehicle as defined by section 20 of the Road Traffic Act 1988.

Skateboarding etc

To prohibit skateboarding in designated areas [with savings for rights of private landowners]

7. No person shall skate, slid or ride on rollers, skateboards or other self-propelled vehicles in the designated areas [except where authorised to do so by the owner of the land].

To prohibit dangerous or nuisance skateboarding on footways and carriageways [insert words in square brackets if also adopting model byelaw 7]

8. [Outside the designated areas,] no person shall skate, slide or ride on rollers, skateboards or other self-propelled vehicles on any footway or carriageway in such a manner as to cause danger or give reasonable grounds for annoyance to other persons using the footway or carriageway.

Fairground attractions causing obstruction to traffic

9. (1) No person shall operate a fairground attraction—
 - (a) in any public place; or
 - (b) on any land adjoining a street or public place,
 so as to cause obstruction or danger to the traffic in that street or public place.
- (2) “Fairground attraction” means a shooting gallery, swing-board, roundabout, or other structure which is installed, erected or operated for the entertainment of the public.

Dangerous games near highways

10. No person shall play football or any other game on land adjacent to a highway in a manner likely:
- (a) to cause obstruction to traffic; or
 - (b) to cause danger or give reasonable grounds for annoyance to any person on the highway.

Playing games on highways to the annoyance of local residents

11. No person shall play football or any other game on a highway or on land adjacent to a highway in such a manner as to give reasonable grounds for annoyance to any person living nearby.

Touting

12. No person shall in any street or public place—
- (a) advertise or solicit custom for any service; or
 - (b) seek to gather information for use in the supply of goods or services,
- in such a manner as to cause obstruction or give reasonable grounds for annoyance to any person in that street or public place.

Urinating etc

13. No person shall urinate or defecate in any street or public place.

Interference with road warning equipment

14. No person shall without lawful authority move or tamper with any lamp, reflector or other equipment used for giving warning of, or lighting, any obstruction, excavation or other danger in any road.

Interference with life saving equipment

15. Except in case of emergency, no person shall remove, displace or otherwise interfere with any life saving equipment placed by the Council or any other competent authority in any street or public place.

Climbing upon and hanging from bridges

16. (1) No person shall without reasonable excuse—
- (a) climb upon or hang from any bridge to which this byelaw applies; or
 - (b) aid, abet, counsel or procure such an act by another.
- (2) “Bridge” includes any abutment, embankment, retaining wall or other work supporting or protecting the bridge.

Penalty

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

Revocation

18. The byelaws relating to state subject matter which were made by insert name on insert date and were confirmed by insert name of confirming authority on insert date of confirmation are revoked.

SCHEDULE [1]

The designated areas are:

SCHEDULE 2

The bridges referred to in byelaw 16 are as follows:

Annex B

Extract from application form for provisional approval of Byelaws which vary, or are not covered by, ODPM Model Byelaws

These are the issues and questions which local authorities are expected to take into account in the course of preparing byelaws:

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 directly 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 Council 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 byelaw.
8. Is the authority content that the byelaws are reasonable in how they will be applied in the particular local context (ie. 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.

Please confirm the following, deleting as appropriate

9. The local authority:
 - believes that the byelaws are necessary in the local context;
 - believes that this application is reasonable and that other means of addressing the situation at which the proposed byelaws are directed are inappropriate or insufficient;
 - is content that the proposed byelaws do not duplicate or conflict with national legislation or common law;
 - is satisfied that the proposed byelaws do not conflict with any central government policy of which they are aware; and

- is content that the byelaws are certain in their terms (i.e. that they contain adequate information about the duties of those whom they might affect, are positive and avoid ambiguity).

10. The authority is content 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. List any objections of which the authority is aware (before sealing and advertisement of the byelaws) and the authority's response to those objections.