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 9).

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 and reasonable.

4. The Confirming Authority

LNR byelaws are confirmed by the Secretary of State for the 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.
5. Advance approval

In view of the above section, we strongly advise the council to seek advance approval 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.

6. 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 and reasonable. 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. It may also be difficult to enforce byelaws which ban dogs from large areas or require them to be on leads. In these circumstances, it may be prudent to use wording such as “To keep dogs under control”.

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.

7. 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.

8. 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.

9. 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.
10. 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.

11. 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.

12. 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.

13. 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).

14. 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.

15. 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.

16. 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;
- English Nature’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.

17. 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.
18. 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.

19. 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.

20. 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 christopher.lewis@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.

Foot Notes;
¹Amended by Natural Environment and Rural Communities (NERC) Act 2006.
²Amended by the (NERC) Act 2006
³Amended by the (NERC) Act 2006 and the Environmental protection Act 1990.

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

(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 dog unless it is kept on a lead or any other animal unless it is kept under proper control and is prevented from worrying or disturbing any animal or bird.

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

Areas of Water

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

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

(xiii) Water skiing, or ice skating.

(xiv) Sailing model boats.

(xv) 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.

(xvi) 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.

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

Use of Vehicles

(xviii) 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.

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

(xx) Launching or landing a hang glider except in an emergency.
(xxi) Operating any hang glider at such height that persons on the ground or in buildings may be inconvenienced or annoyed.

Use of Certain Equipment

(xxii) 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.

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

Use of Firearms etc.

(xxiv) 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.

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

General Prohibitions

(xxvi) 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.

(xxvii) Flying any kite or model aircraft.

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

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

(xxx) Posting or placing any notice or advertisement.

(xxxi) 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.

(xxxii) (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.

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

(xxxiv) 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.

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

(xxxvi) 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 representations about the confirmation of the byelaws should be made by letter addressed to the for the Department for the Environment, Food and Rural Affairs, European Wildlife Division, Zone 1/12, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB, and should quote the reference [ Reference as quoted on letter attached ]

Signed:[ ]
[ eg Senior Solicitor ]