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INFORMATION SHEET NO: C5

**By-laws for commons, village greens
and open spaces**

What are they?

1. By-laws are rules made by a local authority or certain other public bodies under an enabling Act of Parliament, for the regulation, administration or management of a specific area. They are binding on all those who come within their scope.
2. By-laws can be made to cover anti-social acts which have been committed and are likely to be repeated but which cannot be dealt with, or which are difficult to deal with, under the general criminal law, notably the Criminal Damage Act 1971.
3. The Countryside and Rights of Way Act 2000 contains provisions for the making of by-laws regulating public rights of access and, the appointment of wardens, and for the erection and maintenance of notices indicating boundaries of access land and any exclusions or restrictions (s17, 18, 19 and 14(4)).

By-laws for common land and open spaces

Commons

4. By-laws can be made under several acts or schemes.
 - a. Commons Act 1899, section 1 ⁽¹⁾ for by-laws to cover the prevention of nuisances and the preservation of order on commons managed by district councils under schemes made under the act (district councils).
 - b. Commons Act 1876 for by-laws for those commons managed under schemes under the act (conservators of the commons).
 - c. Open Spaces Act 1906 for by-laws to regulate commons owned or controlled by a local council (counties, districts, boroughs and local councils).
 - d. Specific local acts eg Malvern Hills Act 1884.
 - e. National Trust Act 1907 where the common is owned by the National Trust.
 - f. Metropolitan Commons Act 1866 (and subsequent Acts 1869, 1887, 1898). A metropolitan common is any common, the whole or any

part of which was situated within the Metropolitan Police District (a 15-mile radius of Charing Cross) on 10 August 1866.

- g. Law of Property Act 1925, section 193, allows the owner of a common covered by this provision to apply to the Secretary of State for Environment, Food and Rural Affairs for an order of limitations to control public behaviour in the same fashion as by-laws (owner).

This section applies automatically to all commons situated wholly or partly within a former borough or urban district. An owner of any other common can grant a voluntary deed of access under this section.

5. A by-law cannot take away a commoner's rights to exercise his grazing rights.

Village greens

6. On greens, by-laws can be made under a number of the same provisions as apply to commons, depending on to which acts the green is subject. Special conditions apply to them and if the area you wish to control is a registered village green you should contact the Department for Communities and Local Government.

Pleasure grounds, public walks and open spaces

7. By-laws for these can be made under various acts, both national and local.
 - a. Public Health Act 1875, section 164, for by-laws to regulate public walks and pleasure grounds (counties, districts, boroughs and local councils).
 - b. Open Spaces Act 1906, section 15, for by-laws to regulate open spaces or disused burial grounds owned or controlled by the council (counties, districts, boroughs and local councils).
 - c. Countryside Act 1968, section 41, for by-laws to preserve order etc in country parks (counties, districts and boroughs).
 - d. National Parks and Access to the Countryside Act 1949, section 21 (amended by schedule 11 of the Natural Environment and

Rural Communities Act 2006) for by-laws for Local Nature Reserves. Section 90 provides for by-laws for the preservation of order and prevention of damage on land belonging to a local planning authority in a national park or area of outstanding natural beauty; or on land over which management agreements to conserve and/or promote its enjoyment by the public have been made by local authorities. For example such agreements may be made under the Wildlife & Countryside Act 1981, section 39 (local planning authorities and other local councils).

- e. Housing Act 1985, section 23, for by-laws to regulate amenity greens.
- f. Public Health Act (Amendment) Act, 1907, sections 82 and 83, for by-laws to regulate seashore and promenade areas owned by a local authority (district councils).
- g. Specific local acts.

Street playgrounds

- 8. Local authorities can make by-laws to authorise the use of roads as playgrounds under section 31 of the Road Traffic Regulation Act 1984, and for their safety and management as such. (The confirming authority is the Secretary of State for Environment, Food and Rural Affairs or, if in Greater London, the appropriate borough council—see below.) The Highways Act 1980 prohibits various nuisance activities on roads, such as lighting fires and dumping rubbish. Thus the by-laws mentioned above generally only apply to the regulation of vehicles.

Procedure for making by-laws

- 9. These notes apply to local authorities wishing to make by-laws requiring confirmation by the Secretary of State for Communities and Local Government. The procedure for making by-laws is laid down in sections 236 - 238 of the Local Government Act 1972, and the following notes explain those provisions.⁽¹⁾

Provisional approval of the by-laws

- 10. Local authorities are strongly advised to submit their proposals to the Communities and Local Government department in draft, for provisional approval before they are formally adopted or published.

Various model by-laws have been drawn up, which authorities can use (see model by-laws section below).

11. In the case of by-laws for pleasure grounds, public walks and open spaces, the draft should be accompanied by a completed form BYE 5/3 (or BYE 5/3 [DOGS] for dog by-laws)⁽²⁾ for each area to be regulated.
12. In order for the by-laws to be approved provisionally, they must be shown to be valid by being reasonable, specific and unambiguous; consistent with the general law; and within the powers of the authorising statute. Much case-law relating to the validity of by-laws exists.

Making the by-laws

13. Once the draft by-laws have been provisionally approved, and the council has formally resolved to adopt them, the by-laws should be made under the common seal of the authority, or in the case of by-laws made by a parish or community council not having a seal, under the hands of two members of the council.

Advertising the by-laws and holding them on deposit

14. Once the by-law are sealed, a notice of the council's intention to apply for their confirmation must be advertised in one or more local newspapers. A copy of these by-laws must be made available for public inspection for one month from the date of advertisement.
15. The authority may take into account local comments, although there is no obligation on the local authority or Communities and Local Government department to comply with residents' comments or objections, nor is there an obligation to have an inquiry. Any objection to a proposed by-law should be sent to the authority concerned during the month of consultation. A further copy should be sent by the objector to the Communities and Local Government department, if the by-laws are sent on for confirmation.

Applying for confirmation of the by-laws

16. Once the by-laws have been shown to be valid at the time of provisional approval, and objections have been taken into account, the by-laws may then be confirmed by the Secretary of State for

The date of operation of the by-laws

17. This is normally one month from the date of confirmation, unless there are special circumstances which make it desirable for the by-laws to operate at an earlier date. A copy of the confirmed by-laws must be printed and deposited at the authority's offices, where it must be open to public inspection and copies be available for sale. Copies of the by-laws must also be posted at each entrance to, or side of, the open space.

Amending or revoking by-laws

18. The procedure is the same as for making by-laws.

Model by-laws

19. The Communities and Local Government department has model by-laws for pleasure grounds, public walks, open spaces and village greens, held under the Public Health Act 1875, and the Open Spaces Act 1906.⁽¹⁾
20. If a by-law-making authority is applying under the
 - Open Spaces Act 1906
 - National Parks and Access to the countryside
 - Local Government Act 1972 (as amended)

Department for Environment, Food and Rural Affairs (Defra) has produced model by-laws which are available on the website at <http://archive.defra.gov.uk/rural/documents/countryside/byelaw-cr1.pdf>

There is also guidance available at:
Confirmation of Bylaws relating to Countryside Recreation: Guidance for Bylaw-Making Authorities
<http://archive.defra.gov.uk/rural/documents/countryside/byelaw-cr1.pdf>

21. Fields in Trust (formerly The National Playing Fields Association) uses by-laws to cover playing fields vested in the association, but has reproduced them as a model for other organisations to adopt. They are

suitable for recreation grounds and are available for use by the general public⁽³⁾. They are not made under any statute, but can provide a code of conduct on land owned by an organisation.

22. Defra has produced a guide to making local nature reserve by-laws under the National Parks and Access to the Countryside Act 1949 (as amended by the Natural Environment and Rural Communities Act 2006). These by-laws have to be approved by the Secretary of State for Environment, Food and Rural Affairs.⁽⁴⁾
23. Natural England has powers under section 28R of the Wildlife and Countryside Act 1981, as amended by the Natural Environment and Rural Communities Act 2006 for sites of special scientific interest, and provision for by-laws was introduced by the Countryside and Rights of Way Act 2000. No model by-laws have been produced as section 28P is being used to take prosecutions in the magistrates' court as a method of dealing with damaging, third-party activity. Details of prosecutions can be found at:
http://www.naturalengland.org.uk/Images/encrowprosecutions_tcm6-5745.xls
24. For other situations, precedents from existing by-laws are generally followed, and the Communities and Local Government department can give advice on suitable by-laws and their wording. It should be noted that the process of making by-laws is greatly speeded up if standard clauses are used.

Enforcement of by-laws

25. Breaches of by-laws are among the lower tiers of criminal offences. The penalty for breaching a by-law is punishment by a fine imposed by a magistrates' court, and this will vary according to the duration and type of offence. Usually the maximum fine for breaking a by-law is £1,000 and the offender might also have to pay costs.
26. To bring a private prosecution is generally unrealistic because of the costs and risks involved, so prosecutions are usually brought by the local authority or public body which made the by-laws. There is no general power to arrest for breach of a by-law, and the procedure for handling breaches is specified in the by-laws. Information on this is usually given towards the end of the by-laws. In the case of local authority by-laws, the limit on enforcement powers which the Department for Communities and Local Government will accept is to

give the police and local authority officers the power to remove the person from the site.

27. However, this is only where the offending act is committed within the view of the officer or policeman and:
 - a. the name and address of the person breaching the by-law is unknown and the person refuses to give them, or
 - b. infringement of the by-law is likely to be continued, or
 - c. the removal of the person breaching the by-law is necessary to ensure the proper use and regulation of the site.
28. Where the police are asked to step in, they will generally refer the by-law offence to the local by-law-making authority, unless the offence is covered by other criminal law, in which case they may take action under the relevant statute.
29. If a member of the public asks the local authority to prosecute, he or she will have to make a statement of facts to the local authority, similar to a police statement, within six months of the offence taking place. If the local authority decides to prosecute, the magistrate will issue a court summons to the offender. However, it is likely that oral or written warnings will be given to the offender before further legal proceedings are taken. It should be noted that a local authority can be prosecuted for not enforcing by-laws.

Wardening

30. To be effective by-laws are best used as a deterrent, backed up by posting the by-laws in a conspicuous place on site, and regular wardening. Local people might act as voluntary wardens under the authority of the owner or other managing body of the piece of land in question. Often a local authority will have wardening officers to regulate and control all the open spaces, playgrounds, etc.
31. Wardening is also useful for continuing practical conservation tasks which show that the area is well-managed and cared for, and so may deter an adverse activity to start with. A voluntary scheme could be linked to an existing professional ranger service, as found in most national parks. This has the advantage that volunteers will receive some training on how to deal with the public.

Notes

- (1) The advice from the Local Government Division office is don't make a by-law unless you have a problem.

By-laws which relate to pleasure grounds, public walks and open spaces, amusement premises, pleasure fairs, promenades, the seashore, good rule and government, and markets (and for which the Department for Communities and Local Government is the confirming authority) are the responsibility of the Department for Communities and Local Government, Democracy and Local Leadership Division, Zone 5/B1, Eland House, Bressenden Place, London SW1E 5DU Telephone: 0207 944 8154. Further details can be found on the DCLG website at <https://www.gov.uk/government/organisations/department-for-communities-and-local-government>

England

To make a by-law in England, print off an application form from the website below. No solicitor is required. It is recommended that you send your application form back to the Department for Communities and Local Government for them to check. They will then advise you if everything looks correct. The whole operation takes about two months.

The website to go to is the Local Government division at Communities and Local Government: <https://www.gov.uk/local-government-legislation-byelaws>
If you need help, ring 020 7944 4400 or email the by-laws team byelaws@communities.gsi.gov.uk

Wales

For by-laws relating to land in Wales the website is <https://www.gov.uk/government/collections/byelaws-wales>
or please contact

- (1) The National Assembly for Wales,
LG 1A Cathays Park,
Cardiff CF10 3NQ
Telephone 02920 823621.
- (2) See our information sheet C6 on dealing with dog problems.

- (3) Send for a copy from:
Fields in Trust
Head Office
2d Woodstock Studios
36 Woodstock Grove
London W12 8LE
Tel: 020 8735 3380
Fax: 020 8735 3397
Email: info@fieldsintrust.org
- (4) Sealed or draft by-laws and any queries should be addressed to
The Recreation and Access Team
Defra
Zone 1/02
Temple Quay House, 2 The Square
Temple Quay, Bristol
BS1 6EB
Email: recreation.access@defra.gsi.gov.uk

Defra's Sponsorship, Landscape and Recreation Division is responsible for the confirmation of by-laws made under the following powers:

1. **Commons and town and village greens**
 - S6 The Metropolitan Commons Act 1866
 - S84 The Wimbledon and Putney Commons Act 1871
 - S15 Commons Act 1876
 - S36 The Epping Forest Act 1878
 - S1 Commons Act 1899
 - S15 Open Spaces Act 1906
 - S193 Law of Property Act 1925
 - S235 Local Government Act 1972

N.B. Subsection (3) of s235 is to be particularly noted: by-law-making authorities should make by-laws under this power only when the issue they wish to address is not already covered by general legislation or a local Act and when it is not possible for them or another authority to make byelaws or take any other action under any other provision.

- S19 The Ashdown Forest Act 1974
- S11 The Dartmoor Commons Act 1985
- S17 of the Countryside and Rights of Way Act 2000

2. **National parks and areas of outstanding natural beauty**
 - Ss90 and 91 National Parks and Access to the Countryside Act 1949
 - Ss12 and 13 Countryside Act 1968
 - S17 of the Countryside and Rights of Way Act 2000
3. **Country parks and picnic sites**
 - S41 Countryside Act 1968
 - S17 of the Countryside and Rights of Way Act 2000
4. **Countryside**
 - Green Belt (London and Home Counties) Act 1938
 - S41 Countryside Act 1968
 - London (Various Powers) Act 1990
 - S17 Countryside and Rights of Way Act 2000

By-laws which fall either to other divisions within Defra or to other departments to confirm

- (i) By-laws relating to local and national nature reserves and special sites of scientific interest are the responsibility of the protected areas department:
Zone 1/14,
Temple Quay House,
2 The Square, Temple Quay, Bristol BS1 6EB:
email protectedareas@defra.gsi.gov.uk.
- (ii) By-laws made by water companies under section 157 of the Water Industry Act 1991 are the responsibility of Defra's Environment Agency and Waterways Division. Their contact details are:
National Customer Contact Centre,
PO Box 544, Rotherham,
S60 1BY.
Telephone 03708 506 506;
email: enquiries@environment-agency.gov.uk
- (iii) By-laws for land-drainage purposes can be made by the Environment Agency, local authorities and internal drainage boards. The by-law making powers in schedule 25 of the Water

Resources Act 1991 and section 66 of the Land Drainage Act 1991 (both Acts as amended by section 100 Natural Environment and Rural Communities Act 2006) are the responsibility of Defra's Environment Agency,
Ergon House, Horseferry Road,
London SW1P 2AL.
Telephone 0370 8506506

While the Open Spaces Society has made every effort to ensure the information obtained in this factsheet is an accurate summary of the subject as at the date of publication, it is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper.

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