

Parks Byelaws - Briefing about the requirement for a regulatory assessment

Summary

New law is about to change the process for making byelaws for parks and other green spaces. The old process required the council to begin by resolving to make byelaws. The council was then going to consult on its designations proposals before advertising its intention to ask the Secretary of State for Communities and Local Government to confirm the byelaws and specify the date when it comes into force. After the statutory advertisement period the council would then apply for confirmation and the Secretary of State would decide how to deal with any representations made to the statutory advertisement and whether to confirm the byelaws and so bring them into force.

Under the new legal process it is the council that makes the final decision whether or not to make byelaws and when to bring them into force. Before it does so the council must:

1. Consult about a Regulatory Assessment;
2. Prepare that regulatory assessment;
3. Publish a statement of that assessment and submit the byelaws proposals and the assessment to the Secretary of State;
4. If and when given clearance by the secretary of state to do so, publish an advertisement of intention to make byelaws; and then
5. Make a report to Full Council recommending that byelaws be made to come into force on a date to be fixed.

Any council decision will therefore happen later than was planned although if it decides to make byelaws these can be quickly brought into force (within weeks if the Council wishes) without having to wait for confirmation by the Secretary of State.

The Requirement to prepare a regulatory assessment is new (although the issues that must be covered in it have featured throughout the process of formulating the Council's proposals to date) and this note explains what is covered in that assessment.

What is a Regulatory Assessment?

It is an assessment of whether the burden imposed as a result of the new byelaws is proportionate and as a minimum the assessment must include:

- i. Identification of the objectives the new byelaws seek to achieve.
- ii. Identification of any alternative means of securing the objective intended to be secured by the proposed byelaws
- iii. Whether the objective intended to be secured by the proposed byelaws could be satisfactorily controlled by alternative means

- iv. The impact of the proposed bylaws on all persons potentially affected by them
- v. Whether the result of the proposed bylaws would increase or lessen the regulatory burden on persons potentially affected by them
- vi. How the alternative means and the proposed bylaws compare with doing nothing at all

The following paragraphs look at each of these in turn by reference to what the council proposes. When the council submits its Regulatory Assessment to the Secretary of State, feedback from this consultation and the council's response will be included with any amendments to our approach set out.

1. Identification of the objectives the new bylaws seek to achieve

In order to ensure park users' enjoyment and safety, the council and partners need to be able to tackle nuisance and other anti-social behaviour that adversely affects the enjoyment of these open spaces by our communities.

Bristol has a set of Victorian parks bylaws that apply to 25 of its parks. These do not cover all types of anti-social and nuisance behaviour that are reported. A new, more useful, set of bylaws would replace these and apply to many more parks in the city.

2. Identification of any alternative means of securing the objective intended to be secured by the proposed bylaws; and

3. Whether the objective intended to be secured by the proposed bylaws could be satisfactorily controlled by alternative means

Following its 2013 public consultation on the original bylaws proposal, the Council's Neighbourhoods Scrutiny Commission examined the issues raised. It further examined the rationale for bylaws in the light of the alternatives and in particular the new powers in the Anti-Social Behaviour, Crime and Policing Act 2014:

i. Community protection notice:

The community protection notice can provide a quick and effective response to those who persistently act in a way that has a detrimental effect on the quality of life of those in the locality. Available to councils and the police, this out-of-court notice can place restrictions on their behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the issue. In deciding whether the behaviour is having a detrimental effect on the quality of life of those in the locality, issuing officers should consider speaking to victims and potential victims to understand the wider harm to individuals and the community.

ii. Dispersal power:

The dispersal power can be used by police officers in uniform. Police community support officers can also use this power if designated by their chief constable. The authorising officer can sanction use of the power in a specified

locality for a period of up to 48 hours making each decision on a case-by-case basis.

iii. Public Spaces Protection Order (PSPO):

The PSPO is designed to deal with a particular nuisance or problem in an area. It should prove to be an effective tool to tackle locally identified issues. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The council can make a PSPO on any public space within its own area where certain statutory grounds are met, but before doing so it must engage in necessary consultation, which always includes the police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, or an individual or group of individuals, (for instance, regular users of a park). Before making a PSPO, the council also has to publish the draft order in accordance with regulations made by the Secretary of State.

As a result of its Inquiry Day (Nov, 2014), the Commission made a number of recommendations which included:

- (a) a review of the original (2013) byelaws proposal; and
- (b) a consideration of the use of other legislation to tackle problems where this is more appropriate than the use of byelaws

At its meeting of April 2015, the Commission then agreed and recommended a revised set of byelaws be progressed and considered by Full Council. The revised proposals omit byelaws relating to:

- i. Climbing;
- ii. Children's play areas;
- iii. Children's play apparatus;
- iv. Skateboarding; and
- v. Ball games.

As a result the number of byelaws proposed has reduced from 29 to 24. It is considered that byelaws are the appropriate and proportionate response to the issues raised in the 24 remaining byelaws.

Byelaws can be enforced immediately whereas other interventions may require evidence of a persistent nuisance to be built up over time. Equally anybody breaching a byelaw can be immediately removed by the council or police.

Byelaws can empower communities where in some instances members of the public can issue instruction to others to cease their anti-social behaviour, rather than rely on an enforcement agency to act.

However it is considered that the issues numbered (i) to (v) above can be satisfactorily addressed by use of an appropriate alternative means of regulation. These alternative means are not considered satisfactory for the remaining issues due to factors such as the time taken to secure a satisfactory outcome.

Initially the Council proposed only to operate byelaws only in sites where there is a record of official complaint to the council or Police about one or more of the behaviours that can be controlled by byelaws for parks. Having reduced the number of activities it is proposed to cover and considering the nature of the activities addressed by the remaining 24 byelaws, elected Members considered a more proportionate approach had been achieved. However they were very concerned about the prospect of a patchwork of provision that would make it difficult for citizens to know which parks were covered by byelaws and which were not and are supportive of extending these more limited and focused controls to all sites where particular byelaws can be applied. It is considered the benefit of the better regulation this offers outweighs any adverse impact on any individuals who might otherwise cause their anti-social behaviour to be displaced to unregulated green spaces thereby resulting in the Council and the public to commit the time trouble and expense of further enactments which is considered to be excessively bureaucratic given the limited scope of the byelaws that are sought.

- 4. The impact of the proposed byelaws on all persons potentially affected by them; and**
- 5. Whether the result of the proposed byelaws would increase or lessen the regulatory burden on persons potentially affected by them**

New byelaws would give the police and authorised council officers the power to take enforcement action against people who contravene the byelaws. The council would need to act proportionately and with regard to its Enforcement Policy For Regulatory Services.

The principles set out in the current policy are that:

- i. Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- ii. Regulatory activities should be targeted only at cases in which action is needed.

The enforcement policy is founded on a proportionate, incremental approach. The overwhelming majority of issues reported to the authority are dealt with through early, informal interventions and words of advice. It remains our approach that issues affecting users of our parks and green spaces will be tackled in this way and only where more robust enforcement is appropriate will we use the range of tools and powers at our disposal to tackle the negative effects of anti-social conduct.

Byelaws will complement other interventions available to the council and are considered to sit well with the enforcement approach set out in the Council's policy.

The Council's enforcement policy can be found online at <http://www.bristol.gov.uk/page/financial-help-and-benefits/regulatory-services> .

Of course, the potential for prosecution in an appropriate case remains and having a criminal record is a significant impact for the individual concerned, however this is balanced against the overwhelmingly positive impact on parks users of being able to enjoy the spaces knowing there is a means of enforcement that is fit for purpose should other users not comply with the law.

The council has also recognised that:

- where activities are prohibited in designated areas only; or
- where consent needs to be obtained before an activity can take place;

then this can have an adverse impact on law abiding responsible citizens if it results in them being unable to use spaces for activities that have not caused any issues of concern before the byelaws were in place. For this reason the council is committed to designating as many sites as it reasonably can whilst making sure the byelaws do their job. It is also committed to giving consent generally, rather than requiring citizens to seek specific consent. Further information about this can be found in "*Answers to Questions on Specific Byelaws*" document included in the consultation.

6. How the alternative means and the proposed byelaws compare with doing nothing at all

Doing nothing at all is simply not a reasonable option. Since 2012, the Council and other partner agencies have been looking at how to tackle the issues raised by local residents and park users regarding anti-social behaviour in a number of parks and green spaces. Police advice at the time was that they could not take effective enforcement action in many cases because of the lack of comprehensive byelaws.

Considering the two-year period from April 2011 to March 2013 the Council and the police received a total of 3,157 complaints about nuisance in parks which were specifically about issues that could be covered by the initial, larger set of 29 proposed byelaws. Over 200 sites featured in these complaints, over half of all sites in the Council's green spaces strategy most of which would be covered by the byelaw making provisions.

Therefore a significant body of evidence exists of low-level antisocial behaviour that byelaws or alternative powers could help tackle and this has informed the Council's approach to the proportionate use of byelaws in its parks and other relevant green spaces.