

Subject: Council Byelaws
Date of Meeting: 12 January 2010
Report of: Director of Strategy and Governance
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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report summarises the scope of the council's byelaws and the extent to which they are enforced.
- 1.2 The report also explains in brief the changes to byelaw making procedures and enforcement methods to be introduced later in 2010.

2. RECOMMENDATIONS:

- 2.1 That the Committee notes the report, including the list of current byelaws at Appendix 1; and the list of byelaws which it is proposed should no longer require confirmation by the Secretary of State, at Appendix 2.
- 2.2 That officers provide the Committee with further details about the new byelaw making procedures and enforcement regime, once the relevant regulations and guidance are in force.

3. RELEVANT BACKGROUND INFORMATION / CHRONOLOGY OF KEY EVENTS:

- 3.1 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.
- 3.2 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.
- 3.3 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.

3.4 Under the present procedure, no local authority may bring a new byelaw into force until it has been confirmed by the relevant Secretary of State. Before doing so, he/she needs to be satisfied that:

- the proposed byelaw may lawfully be made under an Act of Parliament
- the required consultation and publicity has been undertaken;
- it does not duplicate or conflict with general law, existing byelaws or a relevant local Act;
- it addresses a genuine and specific local problem and does not attempt to deal with national issues;
- it does not conflict with Government policy.

3.5 As regards our own area, byelaws created prior to 1997 applied either to Brighton or to Hove, being part of separate local authorities, and a number of the council's byelaws in existence today are still applicable to one or the other, but not both. This has created a degree of inconsistency in the application of byelaws across the city and, in consequence, practical difficulties with enforcement.

All byelaws created after Brighton and Hove were unified under one authority in 1997 have equal application across both areas.

3.6 In broad terms, our byelaws relate to:

- Parks and open spaces
- Seafront
- Royal Pavilion, museums and libraries
- Hackney carriages
- Acupuncture and tattooing
- Touting and noise in the streets

Authority for making these byelaws stems either from very specific powers (e.g. the Local Government (Miscellaneous Provisions) Act 1982 with respect to acupuncture) or the much broader power to legislate for the good rule and government of the area, and to prevent and suppress local nuisances. The latter power (made under section 235 of the Local Government Act 1972) enabled the council to make the byelaw relating to touting and noise in the streets

A full list of the council's existing byelaws and enforcement activity is set out in Appendix 1.

3.7 Since April 2006, any Dog Control Orders made under the Clean Neighbourhoods and Environment Act 2005 have replaced byelaws relating to dogs. Our own set of Dog Control Orders came into force in January 2009, requiring dog owners:

- to keep their dog on a lead
- to clean up after their dog
- to exclude their dog from certain areas and at certain times of the year

Certain other byelaws have, similarly, been superseded by subsequent legislation. For example the 1966 byelaw making it an offence to deposit mud or clay on the road in Hove has been replaced by provisions under the Highways Act 1980

Enforcement

Enforcement of byelaws

- 3.8 Byelaws can be enforced by authorised local authority officers, police community support officers (PCSO), as well as police officers. First stage enforcement usually involves one of these officers requesting the offender to desist from carrying out the proscribed activity. If this or stronger warnings and exhortations prove unsuccessful, the council may bring a prosecution through the magistrates' court. Here, an offender found guilty may be liable to a fine of between £200 and £2500, depending on the byelaw contravened.
- 3.9 In practice very few, if any, of the council's byelaws are enforced through the magistrates' court. The reasons for this are that:
- (i) the council does not have the resources to monitor byelaw compliance in every location and at all times of the day and night
 - (ii) when an officer does witness someone breaking a byelaw, it is usually better, in the interests of maintaining good relations, to point out they are committing an offence, to ask them to stop, and to give any other appropriate advice. This is usually sufficient to bring about the desired outcome
 - (iii) a prosecution cannot proceed without knowing the defendant's name and address. If the alleged offender fails to provide these details to a council officer, no further action can be taken without a police officer present at the scene
 - (iv) where the council is able to enlist the help of a police officer or PCSO with enforcement, these officers may use their own powers under different legislation to deal with the behaviour
 - (v) bringing a prosecution through the courts is time consuming and imposes a significant administrative burden on the council

Enforcement of Dog Control Orders

- 3.10 Under the Clean Neighbourhoods and Environment Act, an authorised council officer may issue a fixed penalty notice to any person whom he believes is committing an offence under a dog control order. In Brighton & Hove, the current penalty is £80. If the alleged offender refuses to pay this within the prescribed period, he can be prosecuted and, on conviction, liable to pay a fine of up to £1000.

Future changes to byelaw making procedures and enforcement

- 3.11 Regulations expected in spring 2010 will specify the byelaws for which the Secretary of State's confirmation will no longer be required and will set out the new procedures for making byelaws at a local level. They will also set out the stages of consultation which should be undertaken at local and other levels during the preparation of byelaws.
- 3.12 Further regulations will prescribe the classes of byelaw which may be enforced by fixed penalty notice. The option of enforcement through the magistrates' court for persistent or high level offenders will continue to exist. Note, however, that enforcement through the proposed new fixed penalty notice regime will not be

available for any byelaw already made under the existing system (i.e. where the Secretary of State's confirmation is required).

- 3.13 If the council wished to issue a fixed penalty notice in connection with a byelaw created under the present regime, it would first need to revoke the byelaw, and then create a new one when the new statutory arrangements are in force.
- 3.14 Following a consultation exercise in 2008, the Government intends that guidance issued with the regulations should specify in more detail who will be able to issue fixed penalty notices, and advise on the type and extent of training that authorities may wish to provide before officers are authorised to issue fixed penalty notices. The Government proposes to enable authorities to set the level of fixed penalty notices at between £50 and £80.

4. CONSULTATION

- 4.1 Those officers responsible for the enforcement of the council's main byelaws and dog control orders were consulted in the making of this report; so too was the council's prosecution lawyer, regarding the practicalities of instigating and running criminal proceedings for byelaw and dog control order offences.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are very limited financial implications in this report. The costs of enforcement would have to be met within existing resources

Finance Officer Consulted: Peter Francis

Date: 14/12/09

Legal Implications:

- 5.2 The changes referred to in paragraph 3.11 are provided for under Part 6 of the Local Government and Public Involvement in Health Act 2007. Regulations specifying which byelaws will be subject to the new procedures, and which may be enforced by fixed penalty notice, are expected to be laid before Parliament in late 2009 / early 2010, with guidance to follow. Implementation can be expected later in 2010 – exact date to be announced.

Lawyer Consulted: Oliver Dixon

Date: 08/12/09

Equalities Implications:

- 5.3 None arising directly from this report

Sustainability Implications:

- 5.4 None arising directly from this report

Crime & Disorder Implications:

- 5.5 The council's byelaws are aimed at tackling low level criminal activity which cannot adequately be addressed via national legislation. In the majority of cases,

our byelaws are enforced by means of warnings, information and advice. Rarely is it necessary or worthwhile to initiate legal proceedings.

Risk and Opportunity Management Implications:

- 5.6 The advent of new, more streamlined, byelaw making procedures may increase the demand for new byelaws, especially if the new regime is publicised. However, there are resource implications both in the making of byelaws and enforcement, which will need careful consideration before agreeing to requests.

Corporate / Citywide Implications:

- 5.7 The council priority most closely linked to this report is fair enforcement of the law.

SUPPORTING DOCUMENTATION

Appendices:

1. List of existing byelaws for Brighton; Hove; and Brighton & Hove; and associated enforcement activity
2. List of byelaws which it is proposed should no longer require confirmation by the Secretary of State

Documents In Members' Rooms

None

Background Documents:

1. Local Authority Byelaws in England: A Discussion Paper (Office of Deputy Prime Minister, 2006)
2. Government Response to the Making and Enforcement of Byelaws (CLG, October 2009)

