

Byelaws for Ordinary Watercourses

Following the Land Drainage Act 1991, Internal Drainage Boards and Local Authorities are able to make byelaws in regards to ordinary watercourses. Section 66 of the Land Drainage Act 1991 states:

“Without prejudice to the generality of subsection above but subject as aforesaid, an internal drainage board or local authority, other than [an English county] council, may, in particular, make byelaws for any of the following purposes, that is to say –

- a) regulating the use and preventing the improper use of any watercourses, banks or works vested in them or under their control or for preserving any such watercourses, banks or works from damage or destruction;
- b) regulating the opening of sluices and flood gates in connection with any such works as are mentioned in paragraph (a) above;
- c) preventing the obstruction of any watercourse vested in them or under their control by the discharge into it of any liquid or solid matter or by reason of any such matter being allowed to flow or fall into it;
- d) compelling the persons having control of any watercourse vested in the board or local authority or under their control, or of any watercourse flowing into any such watercourse, to cut the vegetable growths in or on the bank of the watercourse and, when cut, to remove them.”

Byelaws are essentially local laws designed to deal with local issues. Local authorities and certain other bodies have powers under various Acts of Parliament to make byelaws. Byelaws generally require something to be done – or not to be done – in a particular location. They are often accompanied with a sanction or penalty for non-observance.

What should the byelaw include?

The model land drainage byelaw includes most of what is needed but it may be necessary to add a byelaw. The use of model byelaws is not mandatory but using a model can help ensure that the proposed byelaws are correctly worded and within the authority's powers. It is more likely to be successful if a model byelaw is used. A number of councils have already introduced Land Drainage Byelaws and the links for these are shown below. Stroud, Peterborough and Harrow all have their own Land Drainage Byelaws. They are very similar as they have used the model byelaws but they do have some differences. For example, Harrow does not include the Tidal Outfalls byelaw as it is not necessary to do so for this borough.

https://www.stroud.gov.uk/info/land_drainage_byelaws.pdf

<http://www2.peterborough.gov.uk/pdf/PCCLandDrainageByelaws.pdf>

http://www.harrow.gov.uk/download/downloads/id/1446/land_drainage_bylaws

How to introduce byelaws?

The procedure for making byelaws has changed recently and under the new 2015 regulations a local authority wishing to make a byelaw must prepare a 'scheme', which must include a draft of the proposed byelaw and an assessment of the regulatory burden which it would create.

One of the first steps would be consult with people who would be affected by the byelaw. In the case of a byelaw regarding ordinary watercourses and land drainage then riparian owners will have to be contacted. A statement will also have to be publishing of its assessment both locally and on a website. After this, the local authority can then apply to the Secretary of State for approval, identifying what it intends to achieve with the byelaw, whether a model byelaw will be used and summarising the responses to the consultation. The statement could be something like this: (Found on the Warrington Borough Council Website)

“The council is in the process of introducing a set of Land Drainage Byelaws based on the Defra-recommended template. The purpose of these are to apply detail to the enforcement and consenting powers to ensure the basic powers within the Land Drainage Act are strengthened and provide effective flood risk action at the local level.”

The Secretary of State must then decide whether to “give leave to the authority to make the byelaw”. If they do, the local authority must then publish a notice in at least one local newspaper as well as on the council website. This notice must state its intentions of making the byelaw. A consultation period of at least 28 days runs from the publication of this notice and a copy of the proposed byelaw must be available to the public at the council's offices. After this period the council can then make the byelaw but it must do so within six months after the publication of the notice.

There are a number of model byelaws which contain standard wording for laws on a number of subjects. This includes a model Land Drainage Byelaw that can be used with details of the council to be added. With this model byelaw items can be removed if they are not relevant to the council and the wording can be changed to accommodate for specific details that need to be included.

The process for introducing byelaws is detailed in a publication from the House of Commons Library written in December 2015. The eight step process for introducing byelaws is shown on the next page:



What are the Pros and Cons of introducing Byelaws?

Pros	Cons
Byelaws enable local councils to address any local issues that are not already dealt with by existing laws.	Byelaws have to be approved by Central Government before they come into power.
Amendments to byelaws are easy to make and can be established quickly. This is useful in an emergency.	The process of introducing byelaws can be delayed depending on the consultation period.
A local authority being able to introduce byelaws is far more efficient than the laws being made by Central Government.	Not all members of the public are aware of new byelaws. However, riparian owners will be sent a leaflet detailing the new legislation.
Model Land Drainage Byelaws are available meaning they are appropriately written and approved by Central Government.	Enforcement of byelaws can often be difficult.
These byelaws will help protect ordinary watercourses and in turn prevent any increase in flood risk.	There will be an increase in workload for Woking Borough Council officers.
They will help make the Borough more resilient to flooding.	
Woking Borough Council will have more power over ordinary watercourses and consultation between SCC and WBC becomes compulsory.	
WBC will also have more control over planning applications in riparian zones.	
It will be possible to charge for consents meaning money used to introduce the byelaws can be made back.	