Appendix 3

# Briefing about the requirement for a Regulatory Impact Assessment

# Byelaw for Pleasure Grounds, Public Walks and Open Spaces

**Summary**

New law was introduced in 2016 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 would then consult on its 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.

The Requirement to prepare a regulatory assessment is new and this note explains what is covered in that assessment. It should be noted that the Byelaws being proposed are the modernised Model Byelaw for Pleasure Grounds, Public Walks and Open Spaces which are an up to date and more understandable version of the Council’s existing Byelaws.

**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 bylaws seek to achieve.

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

iii. Whether the objective intended to be secured by the proposed bylaws 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 byelaws 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.

**1. Identification of the objectives the new Byelaws seeks to achieve**

Below we explain each objective and how we have chosen to apply the objective, is done so in a proportionate manner.

* Update and make contemporary the current Three Rivers District Council (TRDC) Parks and Open Spaces Byelaw.
	+ The current Byelaw that covers the parks and open spaces in Three Rivers is quite old, having come into operation in 1981. The language used also seems antiquated and very formal by today’s standards. It refers to prohibitions that would no longer be entirely relevant, such as the terms ‘wireless set’ and ‘gramophone’.
	+ TRDC believe it is important to ensure all of our open spaces are covered by the Byelaw and such Byelaws are up-to-date and relevant to contemporary society.
* To ensure good behaviour of users of spaces.
	+ Ensuring the parks and open spaces are not used in a negligent and or selfish manner and spaces are maintained in a good standard for the use of everyone in the district.
* To ensure the safe behaviour of users of spaces.
	+ It is important to the Council that the safety and well-being of the users of the parks and open spaces is maintained at all times and any risks to the users or to the Council are mitigated.
* To tackle nuisance and anti-social behaviour adversely affecting the enjoyment of the open spaces.
	+ Where incidences of anti-social behaviour do occur, the council want to have the powers to address this as quickly and as efficiently as possible. Ensuring the enjoyment of the open spaces, by other users, continues unaffected
	+ The council would also like to ensure it is clear to customers and users of the open spaces the things they can or cannot do, such as have a fire or BBQ.
* Enjoyment and use of areas for all groups and users to make the most of an open space, without hindrance to other users
	+ The council hopes to see the enjoyment and full use of our open spaces
* Safe environment for all users
	+ To ensure the environment for users is safe, well maintained, clean (where appropriate), and non-threatening.
* To ensure free and open access, where applicable
	+ It is important to the Council that free and open access is maintained for our customers and where there are limitations, this too is very clear to all users of the facilities.
	+ To ensure, where we are able, all our open spaces are inclusive to all sections of our communities.
* To provide a more useful and effective set of byelaws
	+ TRDC believe it is important that its policies, procedures and byelaws are fit for purpose and applicable to contemporary lifestyles.
* To apply byelaws to additional areas of open space which have come under the ownership or are required to be included under the byelaws
	+ The list of woodlands, parks and open spaces is no longer up-to-date. In the intervening years, since the 1981 Byelaws, the council has procured and/or manage many more areas of land.

**2. Identification of any alternative Laws and regulation (alternative to the use of a byelaw).**

In this section we explain why we have not chosen to make use of the law/power identified rather than to make the Byelaws; that is, why the law/power is not applicable and the Byelaws have to date been more effective and will continue to be more effective.

* Anti-Social Behaviour, Crime & Policing Act 2014
	+ This legislation is intended to provide simpler, more effective powers to tackle anti-social behaviour that provide better protection for victims and communities.
	+ It covers such offences as firearms, forced marriage, risk of sexual harm, extradition arrangements and border control. None of these are comparable to the need for the Byelaws.
	+ This Act does provide powers to deal with such issues as irresponsible dog owners and as such is complimentary to the Byelaws
* Criminal law – e.g. Theft Act 1968; etc
	+ This legislation deals with more serious and specific offences, such as theft. Whereas there may be an act of theft from one of the open spaces, this Act will help the Council to prosecute the offender and is complimentary to the Byelaws
* Criminal Justice and Public Order Act 1994
	+ This legislation is intended to make further provision in relation to criminal justice (including employment in the prison service); to amend or extend the criminal law and powers for preventing crime and enforcing that law; to amend the Video Recordings Act 1984; and for purposes connected with those purposes.
* Wildlife and Countryside Act 1981
	+ An Act to repeal and re-enact with amendments the Protection of Birds Acts 1954 to 1967 and the Conservation of Wild Creatures and Wild Plants Act 1975; to prohibit certain methods of killing or taking wild animals; to amend the law relating to protection of certain mammals; to restrict the introduction of certain animals and plants; to amend the Endangered Species (Import and Export) Act 1976; to amend the law relating to nature conservation, the countryside and National Parks and to make provision with respect to the Countryside Commission; to amend the law relating to public rights of way; and for connected purposes Environmental Protection Act 1990 and associated legislation
	+ This Act is complimentary to the Byelaws
* Clean Neighbourhoods & Environment Act 2005
	+ An Act to amend section 6 of the Crime and Disorder Act 1998; to make provision for the gating of certain minor highways; to make provision in relation to vehicles parked on roads that are exposed for sale or being repaired; to make provision in relation to abandoned vehicles and the removal and disposal of vehicles; to make provision relating to litter and refuse, graffiti, fly-posting and the display of advertisements; to make provision relating to the transportation, collection, disposal and management of waste; to make provision relating to the control of dogs and to amend the law relating to stray dogs; to make provision in relation to noise; to provide for the Commission for Architecture and the Built Environment and for the making of grants relating to the quality of the built environment; to amend the law relating to abandoned shopping and luggage trolleys; to amend the law relating to statutory nuisances; to amend section 78L of the Environmental Protection Act 1990; to amend the law relating to offences under Schedule 1 to the Pollution Prevention and Control Act 1999; and for connected purposes.
	+ This Act is complimentary to the Byelaws
* The Dog Control Orders Regulations 2006
	+ This guidance covers the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006, which implement sections 55 and 56 of the Clean Neighbourhoods and Environment Act 2005 (prescribing offences and penalties to be contained in, and procedures and forms for making, dog control orders), together with the other sections of the Act relating to dog control orders.
	+ This Act is complimentary to the Byelaws
* Environmental Offences Regulations 2007
	+ These Regulations give the Council the power to issue a fixed penalty to any persons known to have broken one or more of the legislation above.
	+ Fines will be not less than £50 and not more than £80; whereas the proposed Byelaws allow for prosecutions and fines of up to £500.
* Traffic Regulation Orders
	+ These Regulations are effective on highways etc and require specific implementation, whereas byelaws are self-regulating.

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

Having consideration for the rationale for byelaws in the light of the alternatives and in particular the new powers in the Anti-Social Behaviour, Crime and Policing Act 2014:

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

The review of the byelaws is the appropriate and proportionate response to the issues raised, as 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. The existing Byelaws have been in operation since 1981 and the updated Byelaws will ensure that all relevant open spaces within the District are covered by the updated Byelaws.

Byelaws have in the past and will continue to 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.

**4. The impact of the proposed bylaws on all persons potentially affected by them; and**

**5. Whether the result of the proposed bylaws would increase or lessen the regulatory burden on persons potentially affected by them.**

The Council has identified a list of potential groups and people who may have an interest in the Byelaw and also who may be impacted by the Byelaw. In this section we will explain why we think they may be interested or impacted. We will explain if we think this impact is negative and/or positive.

* Children –
	+ - Toddlers 0 to 5 yrs
	+ Impact: positive impact to this group – safer places to play and visit
		- Pre-teens 6 to 12 yrs
	+ Impact: positive impact to this group – safer places to play and visit
		- Teenagers 13 to 19 yrs
	+ Impact: positive impact to this group – safer places to play and visit.
	+ Possible impact on those who misuse or misbehave in the open spaces
		- Young adults 20 to 25 yrs
	+ Impact: positive impact to this group – safer places to play and visit.
	+ Possible impact on those who misuse or misbehave in the open spaces
* ‘Friends of’ groups
	+ Impact: positive impact to this group – improve use of the open spaces, opportunities to get involved in looking after the open space. Consultation and engagement opportunities.
	+ Working with the council to enhance the open space
* Volunteers (probation service – the volunteered)
	+ Impact: opportunities to get involved in looking after the open space. Consultation and engagement opportunities.
	+ Consultation is required with the probation service, who, at times, will employ their Community Service clients to maintain the open spaces
* Interest groups – e.g. bird watchers, anglers, kayakers, boating / BLYM
	+ Impact on licenced users of the open spaces. Should be a positive impact. The byelaws will help to manage the open spaces and ensure it is kept to a high standard for all users
* Residents Associations.
	+ Residents Associations, who may have properties adjacent to the open spaces, will need to be consulted on the byelaws; all of which should be a positive impact on the local area.
* Parents of children
	+ Impact: positive impact to this group – safer places to play and visit
* Dog walkers (e.g. greyhound walkers group at Aquadrome)
	+ Impact: positive impact to this group. The byelaws will make it clear to dog walkers how they must act to control and look after their animal while in the open space. Any dog walking business is already limited to the walking of a maximum of four dogs.
* Ramblers
	+ Impact: there should be no impact on this group. Access to the open spaces will be as open and accessible as possible.
* Play Rangers
	+ Impact: there should be no impact on this group. Play ranger groups, provided and supported by the Council will be able to continue as usual. Anyone providing a business from the parks and open spaces should apply to the council for permission
* Adjacent homeowners and residents
	+ See Resident’s associations above
* YMCA woodlands
	+ This group is based in our Leavesden Country Park, where amongst other services provide a nursery and a gym.
	+ Impact: the byelaws will have a positive impact and help the clients to enjoy the public space
* Woodland Trust, Forestry Commission, Countryside Management Service, Waterways Trust
	+ Land belonging to the Woodland Trust, Forestry Commission and Waterways Trust will not be covered by the Byelaws; albeit, the Forestry Commission do provide us with some funding.
	+ The impact for these groups will be neutral.
	+ The Countryside Management Service (CMS) help the Council to write and implement Management Plans for some of our open spaces.
	+ The Byelaws will help to implement and support the management plans and will have a positive impact on this group
* Hirers of spaces e.g. military fitness, Nordic walkers
	+ Impact: there should be a positive impact for groups who wish to hire our open spaces, with the byelaws making it clear what can or cannot be done on the land. Additionally, the use of the consent form will ensure spaces are free for those who have asked to use them
* Football, Bowls, Cricket, Rugby clubs
	+ See Hirers above
* Graziers on common land – grazing animals
	+ Impact: there should be no or neutral impact to graziers on common land. There will be no change to the access of the land and the byelaws will assist to regulate the behaviour of other users.
* Sites of Special Scientific interest (Croxley Moor)
	+ Impact: the byelaws should have a positive impact for sites of special scientific interest and the impact on users should be neutral, with the byelaws making it clearer what users can or cannot do.
* Police (enforcement)
	+ Impact for the police should be positive, providing officers with quicker powers to remove offenders from spaces where they might be causing a disturbance.
* Parish Councils
	+ The impact for Parish councils should be positive because they can use the byelaws to assist them to manage users of open spaces where there is common or shared responsibility for the space.
* Churches, Diocese & Incumbents
	+ In particular, we manage the land at St Mary’s church, which falls under the Schedule of site covered by the Byelaws.

**6. How the alternative means and the proposed byelaws compare with doing**

**nothing at all**

The aim is to update the existing Byelaws so that they are in a modern format and easily understandable by the public. Also ensuring that areas of open spaces which have been acquired or which have not been covered by the previous Byelaws are now included. The previous Byelaws in place assisted in preventing low-level antisocial behaviour on our open spaces and the use of the updated byelaws will continue to provide such assistance to benefit those in the Council district.