

Public Report
Overview and Scrutiny Management Board

Committee Name and Date of Committee Meeting

Overview and Scrutiny Management Board – 10 May 2023

Report Title

Byelaws Overview Following Council Motion

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

This report provides an overview of powers available to Local Authorities to tackle unacceptable behaviours, including byelaws. The report also provides an overview of the processes associated with those powers and the enforcement options they provide. The report is for information in order to support the Committee in discharging their activities as a result of a Council Motion in November 2022, which committed to considering a range of potential actions.

Recommendations

That Overview and Scrutiny Management Board:

1. Note the information and consider any specific further work that may be required

List of Appendices Included

None

Background Papers

Minutes of the Council Meeting held on the 30 November 2022, Notice Of Motion – Rotherham Council Byelaws - [Agenda item - NOTICE OF MOTION - ROTHERHAM COUNCIL BYELAWS - Rotherham Council](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Byelaws Overview Following Council Motion

1. Background

- 1.1 On the 30th of November 2022 a Motion, proposed by Councillor Tinsley, was agreed at Council as follows:

This Council resolves to:

Ask the Overview and Scrutiny Management Board (OSMB) to consider within its work programme the following potential actions, making any recommendations they deem necessary, and require the proposer of this motion to be part of this Scrutiny activity:

1. Review existing byelaws with a view to revoking and replacing them as appropriate.
 2. Bring forward a draft byelaw or byelaws to prohibit removing, displacing, damaging or otherwise interfering with lifesaving equipment across the borough.
 3. Consider enacting new byelaws to prohibit other specific undesirable behaviour in public spaces.
 4. Consult with police, councillors, parish and town councils, and other partners to identify behaviours and public spaces where byelaws could be useful and complete this consultation process within four months.
 5. Implement a regular system of review for local byelaws, to ensure byelaws are revoked and/or replaced when they are no longer useful.
 6. Where it is thought that a Public Space Protection Order (PSPO) would be a more effective tool than a byelaw, proceed with a PSPO.
- 1.2 In order to support OSMB, this briefing has been prepared to provide an overview of Byelaw powers, as well as highlighting alternative options and powers for consideration throughout any further review. This briefing will be supported by a presentation to OSMB at its meeting on the 10th May 2023 to enable further debate on the strengths and weaknesses of the relevant powers and options with a specific section on lifesaving equipment, as referred to in point 2 of the motion detailed in section 1.1 of this report.

2. Key Issues

- 2.1 Byelaws are local laws made by a local council under an enabling power contained in a public general act or a local act requiring something to be done or not done, in a specified area. They are accompanied by some sanction or penalty for their non-observance. Due to the subject matter within the original Motion, this report focusses on byelaws that relate to the Department for Levelling Up, Housing and Communities (DLUHC).

- 2.2 In 2016 DLUHC (at this time referred to as the Ministry of Housing Communities and Local Government), introduced an alternative procedure for byelaws relating to this department. Formerly, byelaws were required to seek both indicative and then subsequent formal approval by the secretary of state. The changes in 2016 sought to remove the requirement for both indicative and final approval however introduced the requirement for Local Authorities to undertake a deregulatory assessment and submit that assessment, alongside supporting materials, to the Secretary of State who will either grant leave to introduce the order locally, or otherwise. The current process for introduction of a byelaw is as follows:
1. Evidence Gathering
 2. Drafting of Byelaw
 3. Deregulatory Assessment
 4. Present to Secretary of State
 5. Secretary of State Approval
 6. Cabinet Report for Consultation
 7. Consultation
 8. Amendments to draft Byelaw
 9. Cabinet Approval
 10. Council Approval
 11. Advertise
 12. Enact
- 2.3 Enforcement of a byelaw is through the Magistrates Court and to breach a byelaw is a criminal offence carrying a maximum fine of £500.
- 2.4 It should be noted that various alternative powers exist, such as a Public Space Protection Order, as well as a variety of informal measures as well as formal enforcement in relation to individuals. In order to consider any form of local provision such as a byelaw or a Public Space Protection Order, the Council must be satisfied of the following in relation to the behaviour to be addressed:
- Behaviours could be considered unreasonable
 - Behaviour have an adverse impact on others
 - Behaviours can be evidenced as persistent
 - Behaviours are carried out by different people, making action against individuals ineffective
 - Other alternative measures have been implemented, without the desired impact
- 2.5 In relation to Public Space Protection Order (PSPO) specifically, this is a power that can be introduced locally and does not require engagement with the Secretary of State however requirement in terms of evidence and impact of behaviour is similar, alongside consultation. A PSPO also offers additional enforcement options, such as issuing a Fixed Penalty Notice (a fine of £100). Enforcing bodies can also consider summoning an individual to court, either for repeated or serious offences or where a fixed penalty is not paid. This could lead to a maximum fine of £1,000.

3. Options considered and recommended proposal

- 3.1 This report is provided for information only in relation to the powers available in order to support the OSMB in conducting further enquiries in relation to byelaws.
- 3.2 It is recommended that the report is noted and that a further presentation be provided to OSMB looking specifically at lifesaving equipment and exploring the evidence and options available in order to safeguard this vital equipment.

4. Consultation on proposal

- 4.1 Consultation has not taken place on this outline report, which is for information only. As noted within the body of the report, introduction of any formal powers detailed in this report requires a full public consultation.

5. Timetable and Accountability for Implementing this Decision

- 5.1 Report is provided for information only.

6. Financial and Procurement Advice and Implications

- 6.1 As this report does not contain any decision, there are no direct financial or procurement implication. Should any future proposal to enact byelaws or PSPOs be made then this would require detailed analysis of the financial and procurement implications associated with the proposed approach.

7. Legal Advice and Implications

- 7.1 The legal implications are noted within the body of the report and these largely relate to the 'Byelaws (Alternative Procedure) (England) Regulations 2016' and the Antic-social Behaviour, Crime and Policing Act 2018 and associated guidance notes.
- 7.2 Any future consideration of individual byelaws or PSPOs would be developed in conjunction with legal advice and any decision to consult or implement would contain a detailed assessment of any legal implications.

8. Human Resources Advice and Implications

- 8.1 There are no staffing implications in relation to this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 This report does not contain any implications for Children and Young People however the impact of any law which could potentially criminalise young people must be carefully considered and therefore a detailed assessment would be required should any draft or final order be proposed for consideration.

10. Equalities and Human Rights Advice and Implications

10.1 This report does not propose any decision and therefore there are no direct implications.

11. Implications for CO₂ Emissions and Climate Change

11.1 This report does not propose any decision and therefore there are no direct implications.

12. Implications for Partners

12.1 Whilst this report does not propose a decision and therefore no implication for partners, any draft or final order may have significant impacts on partners such as the Police and the Fire Service. These implications would need to be assessed in detail should any draft order be proposed and in a number of cases would likely be statutory consultees.

13. Risks and Mitigation

13.1 As this report does not propose a decision, no mitigations are required at this time. The report does highlight some of the strengths and weaknesses of the various approaches.

Accountable Officer(s)

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This report is published on the Council's [website](#).