

Derivation of Powers

Byelaws - Acts of Parliament

The statutory powers derived by the current Secretary of State for Defence to make Military Byelaws were originally granted to his predecessor by the Military Lands Act 1892 Part II, as amended by the subsequent Military Lands Act 1900, Land Powers (Defence) Act 1958 and Armed Forces Act 2011. Extracts from these Acts are detailed below:

Military Lands Act, 1892

PART II

Byelaws as to Land used for Military Purposes

- 1 Power of Secretary of State to make byelaws as to use of land held for military purposes and securing safety of public.
- 2 Application of byelaws where right of firing acquired.
- 3 Byelaws as to highways.
- 4 Notice and enforcement of byelaws.
- 5 Byelaws in case of leased land.

14. – (1.) Where any land belonging to a Secretary of State or to a volunteer corps is for the time being appropriated by or with the consent of a Secretary of State for any military purpose, a Secretary of State may make byelaws for regulating the use of the land for the purposes to which it is appropriated, and for securing the public against danger arising from that use, with power to prohibit all intrusion on the land and all obstruction of the use thereof.

Provided that no byelaws promulgated under this section shall authorise the Secretary of State to take away or prejudicially affect any right of common.

(2.) Where any such byelaws permit the public to use the land for any purpose when not used for the military purpose to which it is appropriated, those byelaws may also provide for the government of the land when so used by the public, and the preservation of order and good conduct thereon, and for the prevention of nuisances, obstructions, encampments, and encroachments thereon, and for the prevention of any injury to the same, or to anything growing or erected thereon, and for the prevention of anything interfering with the orderly use thereof by the public for the purpose permitted by the byelaws.

(3.) For the purposes of this section, "land belonging to a Secretary of State" means land under the management of a Secretary of State, whether vested in Her Majesty or in the Secretary of State, or in a person as trustee for Her Majesty or the Secretary of State; and "land belonging to a volunteer corps" means any land vested in that corps or in any person as trustee for that corps.

1 Where a Secretary of State or a volunteer corps has for the time being the right of using for any military purpose any land vested in another person, his Part of the Act shall apply in like manner as if the land were vested in the Secretary of State or volunteer corps, and the same were appropriated for the said purpose, save that nothing therein or in any byelaws made there under shall injuriously affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land.

16. – (1.) A byelaw under this Act shall not interfere with any highway, unless made with the consent of the authority having control of the repair of the roads of the town, district, parish or other area in which the highway is situate, but where it appears to the authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by byelaws under this Act, the authority may consent to a byelaw providing to such extent as seems reasonable for the temporary diversion from time to time of the highway, or for the restriction from time to time of the use thereof.

(2.) Any such highway, if a footpath, may (without prejudice to any other power of stopping up or diverting the same) be stopped up or diverted in the manner in which a footpath crossing or running inconveniently or dangerously near to any land leased under Part One of this Act may be stopped up or diverted.

2 – (1.) A Secretary of State, before making any byelaws under this Act, shall cause the proposed byelaws to be made known in the locality, and give an opportunity for objections being made to the same, and shall receive and consider all objections made; and when any such byelaws are made, shall cause the boundaries of the area to which the byelaws apply to be marked, and the byelaws to be published, in such manner as appears to him necessary to make them known to all persons in the locality; and shall provide for copies of the byelaws being sold at the price of one shilling for each copy to any person who desires to obtain the same.

(2.) If any person commits an offence against any byelaw under this Act, he shall be liable, on conviction before a court of summary jurisdiction, to a fine not exceeding five pounds, and may be removed by any constable or officer authorised in manner provided by the byelaw from the area, whether land or water, to which the byelaw applies, and taken into custody without warrant, and brought before a court of summary jurisdiction to be dealt with according to law, and any vehicle, animal, vessel or thing found in the area in contravention of any byelaw, may be removed by any constable or such officer as aforesaid, and on due proof of such contravention, be declared by a court of summary jurisdiction to be forfeited to Her Majesty.

(3.) A byelaw under this Act shall be deemed to be a regulation within the meaning of the Documentary Evidence Act 1868, and may be proved accordingly.

18. – (1.) Where land has been leased under Part One of this Act, a byelaw made in respect of that land shall not be inconsistent with any condition contained in the instrument of lease.

(2.) Where land has been leased under Part One of this Act subject to a condition that byelaws relating to the land shall be made with the consent of the lessor, or shall be made by the lessor subject to the approval of the Secretary of State, that condition shall be observed, and the lessor, acting with the approval of the Secretary of State, shall have the same power of making byelaws in relation to the land as is conferred by the Act on the Secretary of State.

PART III

Supplemental

23. In this Act the expression “military purposes” includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries, and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State.

Military Lands Act, 1900

An Act to amend the Military Lands Act, 1892 [8 August 1900]

Be it enacted by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

2. – (1.) Where any land is for the time being appropriated by the Admiralty for any purpose of Her Majesty’s navy, or used by the Admiralty for any such purpose, the Admiralty shall have the same power of making byelaws with respect to the land as may be exercised by a Secretary of State with respect to land appropriated or used for military purpose, as the case may be, and the provisions of the Military Lands Act, 1892, relating to byelaws shall apply accordingly.

(2.) Where any land, the use of which can be regulated by byelaws under the Military Lands Act, 1892, or this Act abuts on any sea or tidal water, or where rifle or artillery practice is or can be carried on over any sea, tidal water, or shore, from any such land, byelaws may be made in relation to any such sea, tidal water, or shore, as if they were part of the land.

Provided that –

(a.) If any such byelaw injuriously affects or obstructs the exercise of any private right of any person in or over any such sea, tidal water, or shore, that person shall be entitled to compensation, and the compensation shall, in the case of difference, be ascertained in manner provided by the Lands Clauses Acts with respect to the compensation for land taken otherwise than by agreement; and

(b.) Any such byelaw shall not injuriously affect any public right within the meaning of this section unless made with the consent of the Board of Trade, but the Board of Trade, if satisfied after such inquiries and such notice and opportunity for objections as herein-after mentioned that a restriction of any public right is required for the safety of the public, or for the exigencies of the military or naval purpose for which the area to which the byelaws apply is used, may consent to a byelaw restricting the public right to such extent as under all the circumstances of the case seems unreasonable; and

(c.) No such byelaw shall be made in relation to any sea, tidal water, or shore which may for the time being be vested in Her Majesty, and under the management of the Commissioners of Woods, without the consent in writing of such Commissioners on behalf of Her Majesty first had and obtained for that purpose, which consent such Commissioners are hereby authorised to give.

(3.) The Board of Trade, before consenting to any byelaw under this section, shall cause notice of the byelaw to be given by advertisement or otherwise in the locality, in order that any such town,

harbour, and other local authorities and persons as are interested may have an opportunity for making objections to the byelaw, and shall consider any objections made, and shall make such inquiries as appear to the Board necessary for the purpose of ascertaining that the byelaw will not unreasonably interfere with any public right.

(4.) For the purposes of this section “public right” means any right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation.

(5.) Where an area to which byelaws under this section apply consists of any sea or tidal water, or the shore thereof and the boundaries of the area cannot, in the opinion of the authority making the byelaws, be conveniently marked by permanent marks, those boundaries shall be described in the byelaws, and shall be deemed to be sufficiently marked within the meaning of section seventeen of the Military Lands Act, 1892, if, while the area is in use for military or naval purposes, sufficient means are taken to warn the public from entering the area.

(6.) Section three of the Artillery and Rifle Ranges Act, 1885, is hereby repealed.

3. – Section twenty-three of the Military Lands Act, 1892, shall have effect as if the definition of “land” in that section included the bed of the sea or any tidal water, and also any right of interference with the free use of any land, and the Military Lands Act, 1892, as extended by the Naval Works Act, 1895, and as amended by this Act, shall be construed accordingly.

Subsequently powers to make military byelaws were granted to the Secretary of State for Air by virtue of s.13 of the Air Force Constitution Act, 1917; the Air Force (Application of Enactments) (No. 1) Order, 1918, and s. 21 of the Air Navigation Act, 1936.

The joint effect of the Air Force (Application of Enactments) (No. 1) Order, 1918, and s.21 of the Air Navigation Act, 1936, is that, in applying the Military Lands Act, 1892, to the Secretary of State for Air, the “Secretary of State for Air” is to be substituted for the “Secretary of State” and that “Air Force purposes” is to be substituted for “military purposes”. The expression “Air Force purposes” includes the building and enlarging of barracks, camps and aerodromes, the storing of aircraft and aircraft material, Air Force training and any other purpose connected with Air Force matters approved by the Secretary of State for Air (Schedule to Air Force (Application of Enactments) (No. 1) Order, 1918). This definition as regards the adaptation of the Military Lands Act, 1892, to the Secretary of State for Air is in substitution for the first paragraph of s.23 of the Military Lands Act, 1892.

Land Powers (Defence) Act 1958

Use of sea areas for defence purposes

Power to make byelaws over sea areas

7. Where in the case of any area of sea, tidal water or shore used or to be used for defence purposes by one of the following Ministers, that is to say, a Secretary of State, the Admiralty or the Minister of Supply, being an area lying wholly or partly within the limits of the territorial waters of the United Kingdom, it appears to that Minister to be necessary or expedient to make provision for regulating the use of that area for those purposes or for securing the public against danger arising from that use, the powers conferred by subsection (2) of section two of the Military Lands Act, 1900 (which enables byelaws to be made in relation to such areas where they abut on, or are subject to rifle or artillery practice from, land appropriated or used for defence purposes) shall be exercisable in

relation to the area in question whether or not it abuts on or is subject to such practice from any such land.

Section 24 of the Armed Forces Act 2011 came into force on the 8th March 2012

24 Byelaws for service purposes

(1) In section 2 of the Military Lands Act 1900 (sea byelaws)—

(a) in subsection (2), omit paragraph (b) of the proviso;

(b) after subsection (2) insert—

“(2A) Before making any such byelaws the Secretary of State must—

(a) take all reasonable steps to ascertain whether the byelaws would injuriously affect any public rights; and

(b) be satisfied, in relation to every public right that the Secretary of State considers would be injuriously affected by the byelaws—

(i) that a restriction of the right is required for the safety of the public or for the requirements of the military purpose for which the area to which the byelaws apply is used;

and

(ii) that the restriction of the right imposed by the byelaws is only to such extent as is reasonable in all the circumstances of the case.”;

(c) omit subsection (3).

(2) In section 17(1) of the Military Lands Act 1892 (notice of byelaws), for the words from “necessary” to the end substitute “appropriate”.