

MIDDLE LEVEL COMMISSIONERS
CODE OF PRACTICE FOR BYELAWS



April 2013

Unless stated otherwise, the term 'Board' may refer to the Middle Level Commissioners, an Internal Drainage Board or District Drainage Commissioners, as appropriate in the context it is used.

1. INTRODUCTION

- 1.1 The Board has made a number of byelaws aimed at protecting the watercourse system that it maintains and at maintaining an appropriate level of flood protection within its area. Copies of these byelaws are available on the Middle Level Commissioners' website www.middlelevel.gov.uk or from the Middle Level offices. The most commonly used byelaws are those that require consent for structures in or adjoining such a watercourse; require consent for increased discharges to such watercourses and protect bank stability.
- 1.2 The purpose of these byelaws is to protect the Board's maintained watercourses and structures and ensure that a right of access is maintained at all times in order to be able to undertake repair and maintenance work and to protect areas which may be needed for future improvements to cope with changed circumstances.
- 1.3 Details of the watercourse system maintained by a Board are obtainable from the Middle Level offices or can be viewed on the Middle Level website www.middlelevel.gov.uk.

2. IMPLEMENTATION

- 2.1 The Board requires all those who propose to undertake any works in any watercourse or in, around or affecting watercourses under the jurisdiction of the Board to seek prior written approval from the Board before they commence such work.
- 2.2 The Board will work in partnership with the planning authorities to seek to ensure that all planning applications that affect the Board's catchment are referred to the Board for comment before they are considered by the planning authority. Planning permission does NOT however remove the need to seek the Board's consents.

3. POLICY

- 3.1 The Board will at all times ensure the retention of an adequate and sufficiently continuous strip of land on the banks of any maintained watercourse to allow free access to meet all foreseeable maintenance needs. **NB:** In the case of a Middle Level Commissioners' watercourse this strip is likely to be at least 10 metres in width.
- 3.2 Under the above byelaws, the statutory protected width, within which consent is required, is 20 metres for the Middle Level Commissioners and 9 metres for all other Boards. The Boards regard the permitting of operations within these widths as having to be specifically justified by the Applicant and such consent would only be consented on it being demonstrated that no material prejudice to their operations will be caused thereby.
- 3.3 The Board may be prepared in some circumstances to allow development close to the channel on one side of any Board maintained open watercourse provided that there is an adequate continuous and guaranteed access strip on the opposite side.
- 3.4 The Board will not normally allow any development over the top of a Board maintained culvert or normally within at least five metres either side of such a culvert.
- 3.5 The extent of any byelaw relaxation will be dependent on all the circumstances including the frequency and priority given to the undertaking of maintenance works on a particular watercourse.
- 3.6 Byelaw consent will normally be given subject to a number of conditions. These conditions are therefore integral to the consent and are required to be complied with.

4. PROTECTION OF CULVERTS

- 4.1 Where watercourses are culverted by the Board, details will be provided to adjoining owners/occupiers and any other affected parties. Such culverts will be identified as Board maintained on the Board's drain map.

- 4.2 Where watercourses are culverted by others details and any conditions subject to which consent to undertake the culverting has been granted will be shown on the consent document, which should be kept with the relevant title deeds.

5. THE PLANTING OF TREES AND SHRUBS

The planting of trees and shrubs will not be allowed where such planting could restrict maintenance operations or the flow of water in a channel or prejudice the stability of the bank of, or an embankment adjoining, a watercourse.

6. ENFORCEMENT OF AGREEMENTS

- 6.1 Where the Board authorise any works within the protected strip it will issue a written consent document containing that approval and the conditions subject to which that approval is given. The Board however also reserves the right to require a signed acknowledgement of the agreement from the owner/developer and a written undertaking that the agreement has been noted on the title deeds and will be kept at all times with such deeds.

7. DEALING WITH BREACHES

- 7.1 Where any breach of the byelaw is discovered or suspected the Board will conduct an investigation. If there is prima facie evidence of a breach the Board will consider the service of notice under the Land Drainage Act 1991, Section 66, which entitles the Board to require remedial action to be taken and provides that any breach of byelaw constitutes a criminal offence.
- 7.2 The notice will require that the breach is remedied within a period, save within an emergency, of not less than 14 days but not normally exceeding 28 days, failure to do this will result in appropriate enforcement action being taken and/or legal proceedings being started.
- 7.3 If the breach is not remedied within the specific timescale then the Board will use Land Drainage Act 1991, Section 66 (7) powers to undertake the necessary works and recharge the costs of such works to the offenders.

8. OWNERSHIP AND USE OF LAND COMPRISING OF OR ADJACENT TO AN OPEN WATERCOURSE OR CULVERT

- 8.1 The Board is not normally the owner of any watercourse, or land adjacent to any watercourse. (**NB:** The majority of the Middle Level Commissioners' watercourses are owned by the Commissioners).
- 8.2 The Board is normally the owner of the site of any pumping stations maintained by the Board.
- 8.3 In consequence, when a watercourse is culverted the Board will not normally own the ground above the culvert.
- 8.4 It must be recognised that circumstances can arise where adjoining owners do not have title to a watercourse eg where land on either side of a watercourse is developed and the title to that land area consisting of the watercourse is not conveyed to either party. In such circumstances the title is likely to remain with the original owner or owners of the land.
- 8.5 Where a watercourse is culverted and adjoining landowners have title to the land above the culvert, any use of this land must comply with the Board's byelaws where the watercourse is maintained by the Board.
- 8.6 In any instance where public access is permitted on any land purchased by the Board or created through culverting of a watercourse, the Board will take all necessary steps to ensure that such access is permissive and that public rights of access are not obtained by uninterrupted use.

9. BOARD DECISION

- 9.1 The Board retains the absolute right and authority to enforce its byelaws and the Code of Practice shall not convey any rights to any person to develop any land without the necessary statutory consents from the Board and other authorities. The Board retains the right to vary any conditions or course of action set out in the Code of Practice. Each application to the Board will be considered on its individual merits.