

Draft Marine Bill, 2008

British Naturism Response

1. Preamble

When a naturist gets dressed the disguise is perfect and there is a justified fear of prejudice so most naturists keep quiet about their preferred dress and few people realise how many there are of us.¹ This Bill has numerous areas of concern:

1. Greatly increased powers for local authorities and/or access authorities to restrict how beaches and the foreshore can be used.
2. The requirements for consultation on Bye Laws are inadequate.
3. These measures will, at a time when demand for naturist facilities is growing, result in grossly inadequate provision becoming worse.
4. The right of access under CROW has loopholes which will be used to prevent naturism.
5. The privacy of coastal naturist clubs will be destroyed and they will probably be forced to close.
6. The requirements that minority groups should be represented and that their needs should be taken into account are inadequate.

Many of these problems only arise because there is no effective protection of naturists against prejudice and many of the problems that this Bill will cause would be alleviated if that was rectified. There are countries in Europe, notably Spain and Denmark, where nudity is a right and it does not cause problems. Indeed there is strong evidence that it has significant beneficial effects. Where problems occur in England and Wales it is almost invariably due to failure by councils to follow best practice.

2. Bye Laws

Some councillors are totally opposed to all naturism under all circumstances. They, and their friends, will tend to dominate the access authorities and they will use the Bye Law making powers to prohibit naturism from long stretches of the coast. For example East Riding of Yorkshire Council has stated many times that they will do everything in their power to prevent naturism throughout their entire area. The nearest designated beaches are in East Anglia, the far side of Wales and on a Scottish Island. None are less than four hours drive away.

There must be a stipulation that bye laws can not be used to prevent naturism. Alternatively, but less acceptably, there must be a requirement that access authorities and local authorities make reasonable provision for naturism.

There are two Bye Law making powers that are of particular concern.

*17. - (1) An access authority may, as respects access land in their area, make byelaws-
(a) for the preservation of order,*

This catch all power is over broad as it could be used to make just about anything illegal if a few people do not like it. National legislation such as s.5 Public Order Act 1986 is more than adequate to maintain order.

(c) for securing that persons exercising the right conferred by section 2(1) so behave

¹ NOP poll – at least 1.3 million and perhaps as many as 2 million people will, if asked, describe themselves as being a naturist. About one person in four has sunbathed or swum nude.

themselves as to avoid undue interference with the enjoyment of the land by other persons.

This is a gift to anyone who is prejudiced against the dress code of a minority group. It will be used to prevent annoyance to the tiny minority who are implacably opposed to naturism. It will not be used to protect the much larger number of people who prefer to be naturist.

Some councillors will only be satisfied with a complete ban on naturism and once a bye law is made it is extremely unlikely that it will ever be revoked.² We do not want to have to resort to legal action against councils but in those circumstances we would have little alternative. That should not be necessary.

There is a wider issue that is relevant. Numerous changes to statute and regulation have had the unintended consequence of making naturism very risky for the most responsible sectors of society. As a result we are seeing a worrying shift in the social structure at many traditional naturist beaches. It will be a sad day when only the irresponsible and criminal dare to use them. For them a misjudgement is just another small fixed penalty. For the more responsible members of society it is their career and reputation. There is substantial research evidence that this fosters attitudes which are harmful to society.³

3.Consultation on Bye Laws

The requirements to consult on byelaws are inadequate.

There must be a requirement that the appropriate national and local representative bodies be consulted with. British Naturism must be explicitly listed in the guidance.⁴

There must be a requirement that when making byelaws account is taken of established and traditional use and that there is reasonable provision for naturism.⁵

The period for consultation is often inadequate. 21 days as currently proposed in the regulations for the Local Government and Public Involvement in Health Act is grossly inadequate. It means that somebody could go on holiday or a business trip and return home to find that they can no longer use their local beach without wearing clothing that is abhorrent to them. It will be near impossible for a local naturist to inform us of a proposal and for us to carry out the necessary research and prepare a submission in such a short time. It is most difficult to envisage any circumstances so urgent that the consultation period could not be at least three months. Of course some people will prefer there to be no time for people to learn of proposals and to campaign against them.

4.Lack of Provision

There are only about a dozen designated naturist beaches⁶ and most of those are along the south coast. On the east coast there are no designated beaches north of The Wash. On the west coast there are none north of Harlech apart from a single remote beach on one of the Scottish islands. Many designated beaches are very busy. For example the National Trust beach at Studland has

2 In North Norfolk it is illegal to wear a swim suit that does not cover from neck to knees. The district council solicitor has confirmed that it is still in force.

3 There is a very strong correlation between prudish societies and high levels of body image and body knowledge related problems. They range from teenage pregnancy and abortion through sexually transmitted diseases to eating disorders. The differences are large. For example a teenager in the USA is nearly ten times more likely to become pregnant and over 70 times more likely to contract gonorrhoea than a teenager in Denmark.

4 Even an explicit listing may not be enough. In early 2008 Caradon District Council erected unlawful and misguided notices. To their credit the notices were corrected very quickly but they had not thought to check if there was a national body. In contrast the press contacted us within hours of the notices being announced.

5 Even an explicit listing will probably be inadequate. BN is listed in the Defra document "Managing Coastal Activities. A Guide for Local Authorities" but it is extremely rare for them to consult us.

6 Strictly speaking there are no naturist beaches and about a dozen clothes optional beaches. Only about 2 miles out of the over 7,000 miles of the English and Welsh coastline is designated as clothes optional.

several thousand users on a good day.⁷ Even the remote beach at Holkham has several hundred. Most traditional naturist beaches have no formal designation and most less frequented beaches are used at least occasionally. Many are busy and they often have a tradition of nude use for as long as anyone can remember. If access is improved then more non-naturists will venture to those beaches and some⁸ will complain.⁹ Protection for naturists is essential. A single complaint has led to councils attempting to ban naturism despite the beach being well used by naturists for decades. Often all that is needed to solve the problem is a sign so that people approaching the beach are not taken by surprise and so that naturists know where the traditional area is.

Many of these problems would be avoided if local authorities were required to make reasonable provision for naturists. Guidance as to the meaning of “reasonable” would be necessary as some councils take the view that any provision at all is completely unreasonable.

5. Denial of Access

The right of access in CROW has provisos which will be used to deny naturists access to beaches.

CROW Schedule 2.

RESTRICTIONS TO BE OBSERVED BY PERSONS EXERCISING RIGHT OF ACCESS

General restrictions

*1. Section 2(1) does not entitle a person to be on any land if, in or on that land, he-
(d) commits any criminal offence,*

Despite Parliament's clearly expressed intentions some people in the criminal justice system insist that all public place nudity is criminal. This is also a widely held misapprehension amongst the general public and many naturists. Consequently paragraph (d) will be used to deny access. This area of the law needs to be clarified.

(r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,

Some people will be annoyed or disturbed so paragraph (r) will be used to deny access. We have been advised¹⁰ that there is no case law and that consequently it is unclear what this paragraph actually means in practice. Accordingly this must be clarified to ensure protection for minority groups.

These provisions are a recipe for dispute. We have felt compelled to commence preparations towards the purchase of land around the coast. We could have the ludicrous situation where non-naturists are denied access to naturist owned coastline and naturists are denied access to coastline controlled by gymnophobes because each annoys the other.¹¹

6. Loss of Privacy

Private land will be made into public space and there is at least one naturist club that is directly on the coast. There are also numerous householders who greatly value using their garden without the encumbrance of clothing.

For many people an allegation of exposure can result in loss of their career so reassurances are not enough. There must be absolute guaranties that the current use can continue without fear of

⁷ Phone call from the author to National Trust area office.

⁸ NOP poll – Opinion on beach naturists: Criminal 2%; Call the police 1%.

⁹ Complaints are not common. A surprisingly high proportion are because the complainant thinks that somebody else will be offended or harmed.

¹⁰ Statement by Portsmouth City Council solicitor. The council and naturists were trying to ensure that a property developer could not close down a naturist beach.

¹¹ Many naturists find clothes wearers annoying and some would like to see them prohibited from naturist beaches. We are looking for suitable beaches with a view to purchase.

anything appearing on a CRB check or of any criminal offence being committed.¹² Without explicit protection the land will be unusable for naturism and the creation of public access will amount to the confiscation of a valuable asset.

The privacy of naturists must be protected. We do sometimes encounter incredible prejudice and publicity can destroy a career.

Many of the same privacy issues also apply to beaches.

For naturists privacy is a consideration, often an overriding consideration, when buying a house. Removing that privacy amounts to confiscation of an asset.

There must be protection with respect to photography for both adults and children. Naturist photographs of children are not indecent so the Protection of Children Act does not safeguard their privacy. A photograph of a teacher, a health service worker or people working in many other sectors may well end their career, particularly if it appears on the internet.

There must be a power to make byelaws to protect privacy. For example at naturist beaches and land there may need to be a Bye Law to prevent covert photography or the taking of photographs without consent in which somebody is recognisable. There will need to be byelaws to reduce the impact on householders who's privacy will be adversely affected by new public access.

7.Representation

There must be a requirement that Local Access Forums are representative of the users of the beaches and coast path.

8.Military Lands

It is difficult to understand why military lands should be excluded from CROW. The MoD is just as capable of applying for exemption as anyone else. A fast track process for exemption for a limited time period, say 10 years renewable, is the most that should be provided.

¹² In 2008 a headmistress was suspended when the chairman of governors discovered that she was a naturist. A school governor was forced to resign but we were not directly involved in that case. The John Pinnington case demonstrates how unsubstantiated allegations can cost people their career.

9. Action points

1. There must be general protection for naturists against discrimination.
2. There must be a general requirement to make provision for naturists.
3. It must be explicit that naturism is regulated by national legislation and not by byelaws.
4. The requirements for consultation on the making of byelaws must give those likely to be affected realistic opportunity to respond. A consultation period of at least three months and a wide ranging requirement to consult with relevant representative organisations, both national and local.
5. Naturists must have certainty that increased public access will not make naturism illegal. Otherwise it will effectively be confiscation of an asset.
6. If privacy is reduced then it is effectively confiscation of an asset and there must be compensation.
7. Where privacy is reduced there must be protection against covert photography.
8. Where privacy is reduced there must be protection against publication of photographs in which non-consenting individuals can be identified.
9. Consideration must be given to protecting the privacy of beach users.
10. Local Access Forums must be representative of all users of the coast.
11. There should not be a blanket exemption for military lands.