



The Marine BILL

Submission by British Naturism

to

The Baroness Miller of Chilthorne Domer
The Lord Taylor of Holbeach CBE
The Lord Greaves

March 2009

Introduction

- 1 British Naturism is the representative organisation for naturists in the UK.
- 2 About 1.5 million people in the United Kingdom describe themselves as being a naturist¹ and there are about ten times that number who practise naturism to at least some extent. There is a surprisingly high level of acceptance by the public though there are also some who are deeply prejudiced against nudity. When a naturist is dressed the disguise is perfect so few people realise how many there are of us.²
- 3 The levels of prejudice and discrimination that naturists encounter is significant, it does result in appreciable harm to individuals, groups and to society as a whole and it does cause unnecessary curtailment of individual freedom.
- 4 The currently available protection against discrimination is inadequate but we believe that comparatively minor changes to legislation and policy could remedy that deficit.

Present provision

- 5 Strictly speaking there are no naturist beaches in England and Wales as swimsuits are not banned. There are about a dozen beaches that have been designated as clothes optional but it is only a little over a mile in total, out of nearly 7,000 miles³ of coastline. There is only one designated clothes optional beach on the entire west coast, a remote spot to the north of Aberystwyth. On the east coast we expect that this summer the only provision will be a similarly remote beach in Norfolk. For somebody on the Yorkshire coast the nearest designated beaches are in East Anglia, the far side of Wales or on one of the Scottish Islands, all of them over four hours drive away. Despite often difficult access⁴ the designated UK beaches are very busy. For example the National Trust beach at Studland has several thousand users on a good day.⁵
- 6 In addition to the above there is a designated clothes optional beach on the east coast near Lowestoft but Waveney District Council intend to remove the designation. This is despite it being one of the busiest beaches in the area. They have not followed Defra advice and they have ignored requests to discuss the issue. The consultation documents contain numerous errors and they are in places offensive. The administration of national assets by local government is causing problems.
- 7 Most traditionally clothes optional beaches have no formal designation and most less frequented beaches are used without costumes at least occasionally. Many are busy and have a long tradition of nude use. Indeed in many cases the tradition probably pre-dates the invention of the swimsuit. A single complaint has been known to result in attempts to ban naturism when probably all that was needed was a sign so that people approaching the beach were not taken by surprise.
- 8 In Denmark nearly every beach is available, in The Netherlands there are at least 28 designated beaches in 185 miles of coastline.⁶ They are well signposted and easily

1 NOP poll. 2001. "and would you describe yourself as being a naturist?"

2 Harmless 88%, sensible 40%, I am one 2 to 3%. The British Naturism Statistics Briefing Note provides further information about numbers.

3 Dr. Peter French, Department of Geography, Royal Holloway, University of London.

4 Disabled naturists are quite rightly indignant about the difficult access but they and we feel unable to complain when the easy solution is to remove the clothes optional designation.

5 Telephone call by author to National Trust Area Office.

6 Naturisten Federatie Nederland web site

accessible.

Legal background

- 9 Nudity in public places is not specifically prohibited and it is lawful in a much wider range of circumstances, including on most beaches, than most people realise. In practice, however, there is often harassment which creates problems for naturists and non-naturists alike.⁷
- 10 During the passage of the Sexual Offences Bill Parliament made it clear that activities such as nude sunbathing and skinny dipping should be able to continue in suitable places. Unfortunately:
 - some police officers take the view that nowhere could possibly be suitable⁸,
 - the law is inherently vague and
 - for anybody requiring a CRB check the penalties are draconian.
- 11 Fixed penalty notices can result in a record, probably phrased in damning terms, that will be revealed by an enhanced CRB check and the cost⁹ in stress and fees to defend oneself is prohibitive. We know that people working in careers such as health care or teaching¹⁰ increasingly feel unable to be naturists.¹¹
- 12 It is unacceptable that only those with little to lose can risk being a naturist on 6,699 miles out of the 6,700 miles of the English and Welsh coastlines. We suspect that it is causing unwelcome changes in the social balance at naturist beaches. There is also substantial evidence that the changes to societal attitudes that it encourages are harmful and that they are especially harmful to young people.¹² The only beneficiary is the overseas travel trade.
- 13 All this is in stark contrast to many other European countries. For example in Denmark nudity has been legal on all except two beaches since the 1970s and a recent court ruling reinforced that principle. In Spain a police officer was prosecuted for harassing a naturist.¹³ In The Netherlands local authorities can not attempt to regulate nudity unless they make adequate provision.¹⁴ Unfortunately in the U.K. we enjoy no such protection.

General principles

- 14 We support the principle of improved access to the coast but we suspect that some of the consequences of the proposed legislation have not been thought through as carefully as they might. In our view the Marine Bill represents both an opportunity

7 The British Naturism Publication "Managing Coastal Activities (Naturism), A Guide for Local Authorities" considers these issues in more detail.

8 One area commander was adamant that nudity in public was illegal under all circumstances whilst another influential officer considered it to be lawful under circumstances that even we find surprising.

9 Fixed penalty notice, case dropped. Reclaimed about £9,000 but over a thousand pounds out of pocket and no compensation for the considerable stress and wasted time.

10 We recently advised a headmistress. The chairman of governors had suspended her from duty when he learnt that she was a naturist. She was reinstated but nobody should be treated like that.

11 This does not just result in fewer naturists. We know that it has contributed to some peoples decision to leave a profession.

12 See BN submission to The Scottish Government concerning child welfare.

13 AFP News, 30 Jan 2007. Police officer ... faces a fine and having to pay damages ... telling ... to cover up ... riding a bicycle in his birthday suit through the city ... Europa Press news agency and others.

14 The research shows quite clearly that it is not coincidence that all of those countries have much better outcomes for many body-image and body-knowledge-related problems such as teenage pregnancy.

and a threat. There is the opportunity to improve on the present situation and there is a threat both to naturists and to the well-being of society as a whole.

Areas of concern

15 We have several areas of concern:

1. Byelaws
 - Greatly increased powers to make law restricting the use of beaches and foreshore.
 - The byelaw making powers under CROW are overly broad and unnecessary.
 - The requirements to consult when making byelaws are inadequate.
 - The requirements to inform the public of byelaws are inadequate.
2. Access
 - The right of access under CROW has loopholes.
3. Privacy:
 - The privacy of a coastal naturist club could be destroyed in which case it will probably be forced to close.
 - Private gardens and other private land will become visible from the path and hence public. Activities at present perfectly legal will become very risky or illegal.
4. Minority groups and traditional use
 - There are no requirements that the rights and needs of minority groups or the traditional use of an area should be respected.

Byelaws

16 The byelaw making powers of CROW are unnecessary. Defra have informed us that they have never been used and we are unaware of any suggestion that the present byelaw-enabling powers for the seashore are inadequate. It is desirable to reduce the size of the statute book so we request that this part of CROW should be repealed as unnecessary. Alternatively, but less desirably, the Bill should be amended so that these powers do not apply to the coast.

17 The byelaw-making powers of CROW are excessive and open to abuse. In particular:

17. - (1) An access authority may, as respects access land in their area, make byelaws-

(a) for the preservation of order,

...

(c) for securing that persons exercising the right conferred by section 2(1) so behave themselves as to avoid undue interference with the enjoyment of the land by other persons.

18 17 (1) (a) is an overly broad power and it duplicates other byelaw-enabling powers. Statutory offences such as s.5 Public Order Act 1986 and penalty notices for disorder are more than adequate to preserve order.

19 17. (1) (c) 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.

- 20 Once a byelaw had been made it may never be revoked no matter how ridiculous it may be¹⁵. Some East Riding of Yorkshire Councillors have stated that they will do everything in their power to prevent naturism throughout the entire district and they control the council. They will try to persuade the access forum to prohibit naturism along the entire coast. We expect other councillors and councils to take a similar view.
- 21 Byelaws applying to the general public can change every few metres and it is unreasonable to expect the public to seek them out, indeed it is well nigh impossible. It would require contacting every local authority, every access authority and numerous other bodies from parish council level upwards.

22

We request that:

- 1 The CROW byelaw-enabling powers should be repealed as unnecessary.
 - If not repealed then provide safeguards against misuse.
- 2 It should not be possible to create byelaws unless:
 - prior to proposals being made, there is meaningful discussion with both the public and the appropriate national and local representative bodies.
 - following proposals being made, there is effective consultation with both the public and the appropriate national and local representative bodies.
- 3 Byelaws should be invalid:
 - Unless they are adequately signed.
 - Unless the needs of minority groups and traditional use is taken into account.

Right of Access

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,

...

(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,

- 23 Despite Parliament's clearly expressed intentions some people in both law enforcement and the criminal justice system insist that all public place nudity is

¹⁵ In North Norfolk it is still an offence to wear a swim suit that fails to cover from neck to knees.

criminal, a misapprehension that is widespread amongst the general public. Consequently paragraph (d) will be used to deny access. Measures to clarify the law are suggested later in this document.

- 24 Paragraph (r) “*disturbs, annoys*” has such an incredibly low threshold that almost any activity could be excluded so it will also be used to deny access. We have been advised that there is no case law and that consequently it is unclear what this paragraph actually means with respect to naturism.¹⁶ Accordingly this must be clarified to ensure protection for minority groups. It largely negates the stipulation that land owners can not make access conditional.
- 25 If access to the remote beaches commonly used by naturists is improved then more non-naturists will venture to those beaches and some will complain about the dress code that is found at most remote beaches.

26 We request that:

- | | |
|---|--------------------------------------------------------------------------------------------------------------------------------|
| 4 | the legality of naturism be clarified so that (d) can not apply |
| 5 | the loophole provided by paragraph (r) be removed. We suggest that the words “ <i>disturbs, annoys or</i> ” should be deleted. |

Privacy

- 27 The removal of privacy makes a previously private place public. For many people even an allegation of illegal nudity can result in loss of their career and reputation so reassurances are not enough. It must be certain that the current use can continue without fear of prosecution or of anything appearing on a CRB check. Without explicit protection there will be many people who will be unable to continue using previously private land for naturism. The creation of public access, to either their land or to adjacent land, will amount to the confiscation of a valuable asset which it will probably be impossible to replace.
- 28 There is at least one naturist club directly on the coast. If a coast path is created through the land that they occupy then the club will probably be forced to close. In addition to the privacy and legal issues for adults we also have serious concerns about the safety and privacy of naturist children. We have written to Natural England but as yet there has been no reply.
- 29 There needs to be protection with respect to photography for both adults and children. A photograph of a teacher, a health service worker or people working in many other sectors may well end their career. There is nothing wrong about being a naturist so the preferable means of protection is to provide explicit protection against this type of discrimination.
- 30 If protection can not be provided against discrimination and prejudice then there needs to be byelaw protection of privacy. This is an issue both for land such as people's gardens and for clothes optional public places such as beaches. For example the byelaw might prevent the taking of covert or intrusive photographs. We are concerned by the creeping trend towards criminalising more and more of photography but without protection by alternative means that may be necessary.
- 31 It is difficult to envisage how, at present, the alignment process can provide adequate protection.
- 5.4.2. In addition, we will consider in the alignment process how our proposals may affect the privacy of people in the immediate vicinity of*

¹⁶ Council Solicitor, Portsmouth City Council. A developer had offered to make a designation under CROW as a guarantee that naturists would be able to continue to use a beach.

houses, hotels or other residences, and aim to strike a fair balance between these concerns and the interests of the public in having rights of access, as clause 273(3) of the draft Bill requires.

32 The main risk areas are prosecution for nudity and invasion of privacy, principally through photography, and consequent publicity. Without effective protection there is no fair balance possible.

33 We request:

- 6 Protection against discrimination arising from naturism
- 7 Protection of current uses and rights with respect to use of property
- 8 Protection against intrusive or covert photography of persons on private property
- 9 Protection against intrusive or covert photography in public places

Minority groups and traditional use

34 We encounter situations where a single complaint from a member of the public carries more weight than a tradition of decades of use by hundreds of beach users.

35 We request that:

- 10 there should be a requirement to take traditional and minority group use into account.

Military Lands

36 According to our research regarding the statutes underpinning this part of the legislation the criterion used is the purpose for which the land was acquired. Hence it does not reflect either the current or the future use of the land. The presumption should be that right of access applies.

Other measures

37 Ghettoes are undesirable but if protection cannot be provided then they may be the only way that naturism is able to continue. We would much prefer mutual toleration but where councils are unwilling to allow reasonable use of the coast by naturists then designated areas is the only alternative.

38 It is not unreasonable to require that reasonable provision is made so that minority groups such as naturists can use the coast without being told how to dress. In our opinion continuation of the status quo whereby nudity is legal in reasonable places is perfectly reasonable. However it is essential for people dependent on CRB checks for their careers that there is much greater clarity as to what is reasonable. Some councils takes the view that any provision at all is completely unreasonable so it will be necessary to define what “*reasonable*” means in this context.

39 It seems to us that in practice the legality of naturism often depends on the whim of individual police officers and councillors. Many of the problems described in this document would be much reduced if it was clearer what the law actually is or proper guidance was provided to police forces and CPS officers.

40 At the request of Devon and Cornwall police British Naturism made available to them our Nativist Beach Code as an A5 flyer suitable for handing out at beaches and for displaying on information boards. We also provided a document to explain the rationale behind it so that officers could be properly briefed. The only modification

was to include the local non-emergency police telephone number. Nationwide adoption of a Naturist Beach Code would clarify the legal position as to what is acceptable and what is not. This would bring significant benefits for naturist and non-naturist alike.

- 41 We request that:
- 11 there should be a requirement to make reasonable non-exclusive provision for minority groups.
 - 12 it should be made clear that nudity in reasonable places and circumstances is not an offence.
 - 13 the Naturist Beach Code should be adopted as a guide as to what is reasonable.

British Naturism

www.british-naturism.org.uk

23 March 2009

To discuss the detail of this submission or related issues please contact Malcolm Boura rlo@british-naturism.org.uk, 07734 964435.
For further information about British Naturism or naturism in general please contact the office headoffice@british-naturism.org.uk, 01604 620361.