

Annex A – Proposed regulations

Draft Regulations laid before Parliament under section 6(2) of the Statutory Instruments Act 1946 (superseding section 2(2) of the Parks Regulation (Amendment) Act 1926) on [date]; draft to lie for forty days pursuant to section 6(1) of the said Act of 1946, during which either House of Parliament may resolve that the Regulations be not made.

STATUTORY INSTRUMENTS

2012 No.

OPEN SPACES

The Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012

Made - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(1) and 2(1A) of the Parks Regulation (Amendment) Act 1926(1) and now vested in the Secretary of State.

A draft of these Regulations has been laid before Parliament for a period of forty days pursuant to section 6 of the Statutory Instruments Act 1946(2), and that period has expired without either House resolving that the Regulations not be made.

Citation and commencement

These Regulations may be cited as the Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012 and come into force on the day after the day on which they are made.

⁽¹⁾ 1926 c.36 (16 & 17 Geo 5); section 2(1) was extended by section 1 of the Royal Parks (Trading) Act 2000 (c.13) and section 2(1A) was inserted by section 150(1) of the Police Reform and Social Responsibility Act 2011 (c.13). The functions of the Commissioners of Works were transferred to the Minister of Works by section 1 of the Minister of Works Act 1942 (c.23) (repealed), and the Ministry of Works (Transfer of Powers) (No 1) Order 1945, SR & O 1945/991. The Minister of Works was renamed the Minister of Public Building and Works by the Minister of Works (Change of Style and Title) Order 1962, S.I. 1962/1549. The functions of the Minister of Public Building and Works were transferred to the Secretary of State for the Environment by virtue of the Secretary of State for the Environment Order 1970, S.I. 1970/1681, and then to the Secretary of State for Culture, Media and Sport by article 6 of the Transfer of Functions (National Heritage) Order 1992, S.I. 1992/1311, and then to the Secretary of State for Culture, Olympics, Media and Sport by article 4 of the Secretary of State for Culture, Olympics, Media and Sport Order 2010 S.I. 2010/1551

⁽²⁾ 1946 c.36 (9 & 10 Geo 6)

Amendment of the Royal Parks and Other Open Spaces Regulations 1997

—a) The Royal Parks and Other Open Spaces Regulations 1997⁽³⁾ are amended in accordance with this regulation.

After regulation 3, insert—

“Acts prohibited in designated Parks

3A.—(1) A constable who has reasonable grounds for believing that a person is doing, or is about to do, a prohibited activity may direct the person—

- (a) to cease doing that activity, or
- (b) (as the case may be) not to start doing that activity.

(2) For the purposes of this regulation, a “prohibited activity” is any of the following—

- (a) operating any amplified noise equipment in a designated Park;
- (b) erecting or keeping erected in a designated Park—
 - (i) any tent, or
 - (ii) any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period;
- (c) using any tent or other such structure in a designated Park for the purpose of sleeping or staying in that area;
- (d) placing or keeping in place in a designated Park any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;
- (e) using any sleeping equipment in a designated Park for the purpose of sleeping overnight in that area.

(3) But an activity is not to be treated as a “prohibited activity” within paragraph (2) if it is done—

- (a) for police, fire and rescue authority or ambulance purposes,
- (b) by or on behalf of a relevant authority,
- (c) in respect of the prohibited activity in paragraph 2(a), by a person so far as that person has the prior written permission of the Secretary of State.

(4) In paragraph (2)(a) “amplified noise equipment” means any device that is designed or adapted for amplifying sound, including (but not limited to)—

- (a) loudspeakers, and
- (b) loudhailers.

(5) In paragraph (3)(b) “relevant authority” means any of the following—

- (a) a Minister of the Crown or a government department,
- (b) the Greater London Authority, or
- (c) Westminster City Council.

(6) It is immaterial for the purposes of a prohibited activity—

- (a) in the case of an activity within paragraph (2)(b) or (c) of keeping a tent or similar structure erected or using a tent or similar structure, whether the tent or structure was first erected before or after the coming into force of this regulation;
- (b) in the case of an activity within paragraph (2)(d) or (e) of keeping in place any sleeping equipment or using any such equipment, whether the sleeping equipment was first placed before or after the coming into force of this regulation.

(7) In this regulation “sleeping equipment” means any sleeping bag, mattress or other similar item designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping in a place.

(8) No person shall without reasonable excuse fail to comply with a direction under paragraph (1).

⁽³⁾ S.I. 1997/1639, amended by S.I. 2000/2949, 2004/1308, 2004/3168, 2010/1194, 2010/2695, 2012/[]

(9) For the purposes of the prohibited activities in paragraph 2(a) to (e), a “designated Park” is any Park listed in paragraphs 1, 3A and 20 of Schedule 1.

(10) In Canning Green the reference to “constable” in paragraph (1) means—

- (a) a park constable, if he or she he has jurisdiction in Canning Green, or
- (b) a constable belonging to the Metropolitan Police Service.

(11) In this regulation—

“Canning Green” means the Park described in regulation 3A of Schedule 1;

“park constable” has the meaning given by section 3 of the Parks Regulation Act 1872⁽⁴⁾.

Directions under regulation 3A: further provision

3B.—(1) A direction requiring a person to cease doing a prohibited activity may include a direction that the person does not start doing that activity again after having ceased it.

(2) A direction requiring a person not to start doing a prohibited activity continues in force until—

- (a) the end of such period beginning with the day on which the direction is given as may be specified by the constable or authorised officer giving the direction, or
- (b) if no such period is specified, the end of the period of 90 days beginning with the day on which the direction is given.

(3) A period specified under paragraph (2)(a) may not be longer than 90 days.

(4) A direction may be given to a person to cease operating, or not to start operating, any amplified noise equipment only if it appears to the constable or authorised officer giving the direction that the following condition is met.

(5) The condition is that the person is operating, or is about to operate, the equipment in such a manner as to produce sound that other persons in or in the vicinity of the designated Park can hear or are likely to be able to hear.

(6) A direction—

- (a) may be given orally,
- (b) may be given to any person individually or to two or more persons together, and
- (c) may be withdrawn or varied by the person who gave it.

(7) In this regulation—

“amplified noise equipment” has the meaning given by regulation 3A(4);

“designated Park” has the meaning given by regulation 3A(9);

“direction” means a direction given under regulation 3A(1).

Seizure of property

3C.—(1) A constable who reasonably suspects that a person has committed an offence under the Parks Regulation Act 1872 or the Parks Regulation (Amendment) Act 1926⁽⁵⁾ in connection with failing to comply with regulation 3A(8) may, subject to paragraph (2), seize anything which—

⁽⁴⁾ 1872 c.15 (35 & 36 Vict)

⁽⁵⁾ An offence of failing to comply with, or acting in contravention of, any regulations made under the Parks Regulation (Amendment) Act 1926 is an offence against that Act if it relates to a park that is a specified park under section 162 of the Serious Organised Crime and Police Act 2005 (c.15). Abingdon Street Garden was incorrectly listed as a specified park under the Royal Parks (Regulation of Specified Parks) Order 2005, S.I. 2005/1522, because it was not a park to which the Parks Regulation Act 1872 then applied. Therefore, it is not a specified park for the purposes of the Serious Organised Crime and Police Act 2005. An offence of failing to comply with, or acting in contravention of, any regulations made under the Parks Regulation (Amendment) Act 1926 is an offence against the Parks Regulation Act 1872 if the Parks Regulation Act 1872 applies to that park and it is not a park that is a specified park under section 162 of the Serious Organised Crime and Police Act 2005. For this reason, an offence relating to Canning Green is an offence against the Parks Regulation Act 1872.

- (a) the person has in his or her possession or under his or her control, and
 - (b) the constable reasonably believes to have been used in the commission of the offence.
- (2) In Canning Green the reference to “constable” in paragraph (1) means —
- (a) a park constable, if he or she he has jurisdiction in Canning Green, or
 - (b) a constable belonging to the Metropolitan Police Service.
- (3) In this regulation—

“Canning Green” means the Park described in regulation 3A of Schedule 1;

“park constable” has the meaning given by section 3 of the Parks Regulation Act 1872.

Retention and disposal

3D.—(1) The Secretary of State may retain anything which has been seized under regulation 3C until the end of the period of 28 days beginning with the date of the seizure.

(2) Paragraph (3) applies where before the end of that period an information for [the offence] is laid—

- (a) against the person from whom the thing was seized, and
- (b) in respect of his or her activities at the time of the seizure.

(3) Where this paragraph applies—

- (a) the Secretary of State may retain the thing seized until the conclusion of proceedings relating to the offence (including any appeal), and
- (b) if an award is made of costs to be paid by the accused to the Secretary of State, the Secretary of State may retain the thing seized until the costs have been paid.

(4) Paragraph (3) has effect subject to any order for forfeiture under regulation 3E.

(5) If the Secretary of State has retained a thing in reliance on paragraph (3)(b) for the period of 28 days beginning with the date of the conclusion of proceedings relating to the offence (including any appeal)—

- (a) the Secretary of State may sell it for the best price which the Secretary of State can reasonably obtain and apply the proceeds in discharge of the award of costs, and
- (b) if the Secretary of State does so, the Secretary of State shall pay any balance to the person whom the Secretary of State believes to have owned the thing immediately before the sale.

(6) Where the Secretary of State ceases to be entitled to retain a thing under this regulation the Secretary of State shall, subject to any order for forfeiture under regulation 3E, return it to the person whom the Secretary of State believes to be its owner.

(7) If the Secretary of State cannot after reasonable inquiry identify a person for the purposes of paragraph (5)(b) or (6)—

- (a) the Secretary of State shall apply to a magistrates’ court for directions, and
- (b) the court shall make an order about the treatment of the thing or the balance of its price.

Forfeiture

3E.—(1) A court which convicts a person of an offence under the Parks Regulation Act 1872 or the Parks Regulation (Amendment) Act 1926 in connection with failing to comply with regulation 3A(8) may order anything to which paragraph (2) applies to be forfeited and dealt with in a manner specified in the order.

(2) This paragraph applies to anything which—

- (a) was seized under regulation 3C,
- (b) is retained by the Secretary of State under regulation 3D, and
- (c) the court believes to have been used in the commission of the offence.

(3) Before making an order for the forfeiture of a thing a court shall—

- (a) permit anyone who claims to be its owner or to have an interest in it to make representations, and
- (b) consider its value and the likely consequences of forfeiture.”

[Date]

Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Royal Parks and Other Open Spaces Regulations 1997 (S.I. 1997/1639) (“1997 Regulations”) to introduce prohibitions against certain acts in parks near Parliament Square. The prohibition is to act contrary to a police direction to cease, not to start, a prohibited activity. The prohibited activities are camping or using amplified noise equipment without permission. Acting contrary to a prohibition under the 1997 Regulations is an offence under the Parks Regulation Act 1872 (c.15 (35 & 36 Vict)) or (for specified parks under section 162 of the Serious Organised Crime and Police Act 2005 (c.15)) the Parks Regulation (Amendment) Act 1926 (c.36 (16 & 17 Geo 5))

The regulations also amend the 1997 Regulations to introduce powers of seizure, retention, disposal and forfeiture in relation to objects used in connection with offences under the Parks Regulation Act or the Parks Regulation (Amendment) Act 1926 that arise from contravention of the prohibitions that these regulations introduce to the 1997 Regulations.

The prohibitions introduced by these regulations apply in Canning Green, Victoria Tower Gardens, the garden around the Jewel Tower, and the lawn around the statue of George V.