

**WELSH GOVERNMENT
LOCAL GOVERNMENT BYELAWS (WALES) ACT 2012
GUIDANCE FOR MODEL BYELAWS SET 6:
THE SEASHORE**

Introduction

1. A byelaw is a local law which is made by a statutory body, such as a Council for a county or county borough in Wales, under an enabling power in an Act of Parliament or an Act of the National Assembly for Wales.
2. Model byelaws act as a template for Councils when drafting byelaws and set out appropriate wording for byelaws on a number of different subjects. However, the models should not be adopted en bloc, but as genuinely required to address an existing problem. Councils should note that some of the individual model byelaws and/or their provisions are optional and only those which are needed and appropriate should be adopted.
3. Once a Council has established that the problem to be addressed is covered by a particular model byelaw, the Council should locate a copy of it from the Welsh Government website and adapt it according to their needs. The accompanying guidance notes will assist in the drafting process. Councils should also follow the relevant procedure as set out in the Local Government Byelaws (Wales) Act 2012.
4. It is recommended that Councils follow the model byelaws in order to reduce the risk of drafting problems or avoid the implementation of byelaws which are not fit for purpose. It should be noted that the model byelaws are not compulsory and may be added to or amended in the light of experience, demand and changing circumstances. There are however some cases in which certain byelaws should be adopted in their entirety.
5. The following guidance note should be read alongside the model byelaws and the *'Local Government Byelaws (Wales) Act 2012 Guidance, including Statutory Guidance, to Welsh Local Authorities, Community and Town Councils, National Park Authorities and Natural Resources Wales'*, issued by the Welsh Government. This can be found on the Welsh Government website at:
<http://gov.wales/topics/localgovernment/local-government-byelaws/?lang=en> :
6. This guidance is designed to support the use of Welsh Government's model byelaws to regulate the user of the seashore and to provide for the preservation of order and good conduct for the purpose of preventing danger, obstruction or annoyance to persons using the seashore, made under Section 82 of the Public Health Acts Amendment Act 1907.

Further information/contact points

7. Any queries regarding these model byelaws should be addressed to:

Local Government Partnerships Team
Local Government Partnerships Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail ethicsandregulation@wales.gsi.gov.uk

The Enabling Power

8. Section 82 of the Public Health Acts Amendment Act 1907 enables local authorities to make byelaws to regulate the user of the seashore and to provide for the preservation of order and good conduct for the purpose of preventing danger, obstruction or annoyance to persons using the seashore.
9. Byelaws made under section 82 of the Public Health Acts Amendment Act 1907 do not require confirmation by the Welsh Ministers under the Local Government Byelaws (Wales) Act 2012. The procedure for making such byelaws is set out in section 6 of that Act, which also imposes a duty to consult any person (including, where applicable, a community council) who the authority thinks is likely to be interested in, or affected by, the issue.
10. It will generally not be possible to use byelaws to prohibit an activity for which there is only a power to regulate. However, it may be possible to restrict certain aspects of the activity, for example by limiting that activity to certain areas of the seashore or certain times of the day.
11. Where any of the byelaws adopted by a Council affect the foreshore below high-water mark and are made for the preservation of order and good conduct, section 82(4) of the Public Health Acts Amendment Act 1907 states that consent of the Welsh Ministers will be required before the byelaws come into operation.

Use of the Model Byelaws

12. Words highlighted in italics give instructions on how to adapt the model (e.g. “*insert name*”) or provide a more detailed description of what is covered by the byelaw where a number of model byelaws relate to the same subject matter.
13. Square brackets are used to indicate:
- (1) additional wording, which it may be appropriate to use in some cases (e.g. “[Outside the designated areas]”;
 - (2) a choice of wording; or

- (3) “numbers which it is likely will need to be updated when editing the model byelaw set (e.g. Schedule [1])

14. If the byelaws are to include schedules or maps, these should appear before the Council’s seal.

Interpretation provisions

15. The general interpretation provision should be used to define terms which are used several times in the text of the byelaws. Councils should only use the definitions in the list which appear in the text of the model byelaws that the Council has selected. Where a defined word only appears in the text of one of the byelaws which a Council proposes to adopt, that definition should be included within the text of the relevant byelaw, preferably as a separate sub-paragraph.

Application and Schedule

16. Where the byelaws will apply to more than one area of seashore, those areas should be listed in a Schedule to the byelaws as indicated by the model set. The names or a description of the areas by reference to physical landmarks should be given under an alphabetical list of towns or districts in which the areas are located.
17. If the byelaws are to apply to a limited part of the seashore, the description of the area should refer to physical landmarks which the public will recognise, and references to local authority boundaries or OS map references should only be used in addition to any descriptions. Any map or plan that is referred to in the byelaws should be: in black and white; of a suitable size for inclusion in the byelaws; and should precede the council's seal. Colour can be used for maps, but Councils should be aware that printed copies of the byelaws will have to be made available in colour.

Signs

18. Councils are required to place notices in conspicuous positions when this is specifically mentioned in a byelaw. Councils should also consider whether notices would be helpful in regard to other byelaws (e.g. to indicate a restricted area in which bait digging is not permitted in model byelaw 7).

Fees and permits

19. Byelaws should not be used to compel any person to pay a fee to the Council or to introduce a licensing or permit scheme. A requirement that a fee should be paid or a permit obtained would, in view of the decision in *Moorman v Tordoff* (1908), 72 J.P. 142, render the byelaw ultra vires and unreasonable.
20. If the Council is the owner or lessee of the seashore, it may be entitled to make charges or require permits in respect of the user of the seashore (subject to any public rights). Any regulations making or requiring charges or permits must be entirely

independent of the byelaws and must be drawn up to make it perfectly clear that non-compliance will not be a breach of any of the provisions of the byelaws.

Vehicles

21. Section 34(1) of the Road Traffic Act 1988 (prohibition against driving mechanically propelled vehicles elsewhere than on roads) provides that if without lawful authority a person drives a mechanically propelled vehicle (a) on to or upon any common land or moorland or land of any other description, not being land forming part of a road, or (b) on any road being a footpath, bridleway or restricted byway, is guilty of an offence.
22. However, it is not an offence under section 34 to drive a mechanically propelled vehicle on any land within 15 yards of a road upon which vehicles may lawfully be driven for the purposes of parking on that land. Local authorities should rely upon the 1988 Act to prohibit the riding or driving of mechanically propelled vehicles on the seashore.

Bait Digging

23. The judgment in the case of *Anderson v. Alnwick District Council* [1993] 3 All ER 613 established that the public right to engage in bait digging is ancillary to the common law right to fish on the seashore. Bait digging may be regulated by these byelaws but may not be prohibited. Regulation might include the prohibition of bait digging within specified areas of the seashore or the prohibition of bait digging for commercial purposes except with the consent of the council but byelaws cannot be used to ban bait digging altogether.
24. Any restricted area in which bait digging is prohibited should not be so extensive as to prevent bait being dug reasonably close by, since it could otherwise adversely affect the common law right. In the definition of "restricted area", the description of the area should if possible be given by reference to physical landmarks which the public will recognise. Paragraph 17 above gives further guidance on this point.

Public Shows and Performances

25. Councils considering adopting this byelaw should bear in mind their responsibilities as public authorities under the Human Rights Act 1998. Any restriction on such events must be justified under article 10 (freedom of expression) of the European Convention on Human Rights. A complete prohibition on performances on the seashore is unlikely to be justified, so if this byelaw is adopted an appropriate designated area must be set aside on the beach where performances can take place.

Trading

26. This model byelaw deals with obstruction or nuisance caused by persistent trading or touting. More general controls on the sale of goods should be dealt with under street trading law. Although the enabling power in section 82 of the Public Health Acts Amendment Act 1907 refers specifically to the regulation of selling and hawking on the

seashore, powers to control street trading under section 3 or and schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 are more comprehensive and should be used in preference. "Street" includes beach for the purposes of the 1982 Act, as set out in paragraph 1 of schedule 4 to that Act.

Fires and Parties

27. It is considered that a prohibition on lighting fires or holding parties may not fall within the scope of section 82 of the Public Health Acts Amendment Act 1907 because it goes beyond the general regulation of the user of the seashore. However, it is recognised that controls over such events may be necessary in some areas for the preservation of order and good conduct or to prevent danger or nuisance to those using the seashore. Councils using byelaws to compel a person to pay a charge or obtain a permit in respect of the regulation of these events is likely to be ultra vires, as considered in paragraph 19 above.

Aircraft

28. In instances where a byelaw is required to regulate the taking off or landing of aircrafts on the seashore Councils must contact the Department for Transport to ensure that the land, which is due to be protected by the byelaw, is not classified as an urban area. Where land is defined as an urban area, the Rules of the Air Regulations 2007 should be used. Regulation 15 of the Air Regulations 2007 provides for "Aerobatics prohibited over urban/congested areas/within controlled airspace – without the consent of the appropriate air traffic control unit".

Revocation

29. This byelaw, which can be used to revoke byelaws contains a number of instructions which may require further elaboration:

"insert name" – the relevant name will be that of the council which made the byelaws, even if that Council is no longer the local authority for that area or is now defunct.