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# Local Government Byelaws (Wales) Act 2012

Statutory Guidance to Welsh Local  
Authorities, Community and Town  
Councils, National Park Authorities and  
Natural Resources Wales

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**LOCAL GOVERNMENT BYELAWS (WALES)  
ACT 2012**

**Statutory Guidance to Welsh Local Authorities,  
Community and Town Councils, National Park  
Authorities and Natural Resources Wales**

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## **Part 1**

### **Introduction**

## Overview

- 1.1. The Local Government Byelaws (Wales) Act 2012 ('the 2012 Act') is an Act of the National Assembly for Wales ("the National Assembly") to make provision for:
  - a) legislating authorities to be able to make byelaws;
  - b) the procedure to be followed in making those byelaws;
  - c) the revocation of existing byelaws; and
  - d) the enforcement of byelaws.
- 1.2. The 2012 Act simplifies the procedures for the making and enforcement of byelaws in Wales.
- 1.3. A byelaw is a local law which is made by a statutory body under an enabling power which is contained in an Act of Parliament or a Measure or Act of the National Assembly.
- 1.4. The 2012 Act replaces and improves the current process for confirmation of byelaws by the Welsh Ministers, where no other confirmation procedure is specified in a particular byelaw enabling power. It also introduces an alternative procedure which removes the need for confirmation by the Welsh Ministers for specified byelaws.
- 1.5. In relation to the enforcement of byelaws, an alternative, more direct option for enforcement is now available through the introduction of fixed penalty notices. Fixed penalty notices can provide authorities with an effective and visible way of responding to low-level offences. This also ensures that the enforcement of specified byelaws is in line with other similar level nuisance offences which are currently enforced by way of fixed penalty notices in Wales.
- 1.6. In doing so, the 2012 Act also recasts and consolidates existing byelaw provisions in sections 235 to 238 of the Local Government Act 1972 ('the 1972 Act').
- 1.7. The 2012 Act received Royal Assent on 29 November 2012.
- 1.8. This statutory guidance is issued by the Welsh Ministers in exercise of their powers under section 18 of the 2012 Act. By virtue of section 18(2) of the 2012 Act, authorities must have regard to this guidance when making or enforcing byelaws.
- 1.9. For the purposes of this guidance the following text is used:
  - **authority** refers to a legislating authority;
  - **local authority** refers to a county or county borough council;
  - **community council** refers to a community or town council;
  - **the 1972 Act** refers to the Local Government Act 1972;
  - **the 2012 Act** refers to the Local Government Byelaws (Wales) Act 2012;

- **FPN** refers to a Fixed Penalty Notice;
- **Proper Officer** refers to the officer of the relevant authority duly authorised to perform specific functions. Local authorities, national park authorities and community councils can appoint proper officers for the purposes of byelaws.

## **Meaning of ‘Legislating Authority’**

### **Introduction**

1.10. The 2012 Act uses the term ‘legislating authority’ when referring to those public bodies in Wales which may utilise the provisions of the 2012 Act to make and enforce byelaws.

### **The Provisions of the 2012 Act**

1.11. Section 3 of the 2012 Act defines a legislating authority as:

- a) a council for a county or county borough in Wales;
- b) a community council;
- c) a National Park authority in Wales;
- d) the Countryside Council for Wales<sup>1</sup>.

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<sup>1</sup> Please note that from 1 April 2013, the Countryside Council for Wales is now a part of a newly constituted body, Natural Resources Wales, and does not retain its own identity. It is proposed to amend the 2012 Act to substitute references to Natural Resources Wales for references to the Countryside Council for Wales

## **Part 2**

### **Byelaws for Good Rule and Government**



## **Byelaws for good rule and government and the suppression of nuisances**

### **The Provisions of the 2012 Act**

- 2.1. Section 2 of the 2012 Act restates the provisions of section 235 of the 1972 Act enabling a county or county borough council in Wales to make byelaws:
  - a) for the good rule and government of the whole or any part of its area;
  - b) for the prevention and suppression of nuisances in its area.
- 2.2. Byelaws cannot be made under this power if provision for the purpose in question is made, or could be made, under another enactment, including subordinate legislation.
- 2.3. Paragraph 2.9 below gives examples of issues which can be addressed under the power to make byelaws for the good rule and government and for the prevention and suppression of nuisances.

### **Statutory Guidance**

- 2.4. This byelaw power may only be used by county and county borough councils and is **not** available to the other legislating authorities.
- 2.5. These powers should not be used to make byelaws where existing legislation addresses the problem, or in respect of any matter where another byelaw making power is available. Before making byelaws, local authorities should consult their legal department about any existing general legislation.
- 2.6. An example of existing legislation which may be appropriate for addressing problems of annoyance and nuisance to local residents is the Clean Neighbourhoods and Environment Act 2005. This provides authorities with a number of powers in relation to the control of nuisances such as graffiti, noise and dog control/fouling. Separate guidance is available on the Welsh Government website.  
<http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/?lang=en>
- 2.7. Many of the activities regulated by byelaws made under the “good rule and government” byelaw power are not in themselves a danger or nuisance, but may become so if conducted in certain areas or in a particularly hazardous or annoying manner. For example, obstruction or nuisance caused by persons touting for business for services or stopping passers-by for market research purposes could become such a problem, depending on the particular circumstances. Consequently,

local authorities do not have a **blanket** power under section 2 to make byelaws to prohibit activities such as skateboarding or riding **throughout their area**. However, it may be appropriate to prohibit these activities **in certain places** where it causes a particular danger or nuisance, or to **regulate** the manner in which those activities can be conducted.

- 2.8. Byelaws made under this power are not subject to confirmation. As such, the procedure set out in section 6 of the 2012 Act and the statutory guidance detailed within the “Making and Revoking Byelaws” part of this guidance document apply. When making byelaws under this power, county and county borough councils must have regard to the relevant statutory guidance issued by Welsh Ministers in accordance with section 18 of the 2012 Act.

### **Examples of byelaws**

- 2.9. Below are some examples of issues which may be addressed by byelaws which have been made under the power in section 235 of the 1972 Act, which section 2 of the 2012 Act restates:

- Riding on road margins and verges;
- Vehicles on road margins and verges;
- Dangerous games near highways;
- Playing games on highways to the annoyance of local residents;
- Touting;
- Urinating
- Interference with road warning equipment;
- Interference with life saving equipment;
- Climbing upon and hanging from bridges.

### **Model byelaws for Good Rule and Government**

- 2.10. The Welsh Government has developed model byelaws for a variety of enabling Acts to assist authorities in framing byelaws. Model byelaws for Good Rule and Government are accessible from the Welsh Government website. They are not prescriptive and may be adopted in full or part. Guidance specific to each model is also available.
- 2.11. Further information on the Welsh Government model byelaws can be found in Part 3 of this guidance (see paragraph 3.73).

## **Byelaws for Good Rule and Government and the Suppression of Nuisances – Power of seizure etc.**

### **The Provisions of the 2012 Act**

- 2.12 Section 11 of the 2012 Act restates section 237ZA of the 1972 Act.
- 2.13 The 2012 Act provides that when making a byelaw for Good Rule and Government and the Suppression of Nuisances, a local authority may include provision for or in connection with:
- a) the seizure and retention of any property used in connection with any breach of the byelaw; and
  - b) the forfeiture of any such property on a person's conviction for non-compliance with, or breach of, the byelaw.

### **Guidance**

- 2.14 The powers of seizure, retention and forfeiture may be included in byelaws for Good Rule and Government made under section 2 of the 2012 Act. These powers will potentially strengthen the enforcement of these byelaws.
- 2.15 The powers of seizure, retention and forfeiture will enable local authorities in Wales to better safeguard their communities.
- 2.16 The power to include seizure, retention and forfeiture is **not** provided to community and town councils, National Park authorities or the Countryside Council for Wales, which are not able to make Good Rule and Government byelaws. Consequently, the powers of seizure, retention and forfeiture contained in section 11 of the 2012 Act are not relevant to these bodies.
- 2.17 It will be up to local authorities to decide whether to include the powers in their relevant byelaws. Local authorities will need to consult their communities when considering including powers to seize and retain property to ensure that they are proportionate and to seek to ensure that human rights are not infringed.
- 2.18 Local authorities already have powers of seizure to enforce some trading byelaws and so are familiar with using such a power.

## **Part 3**

### **Making and Revoking Byelaws**

## The available procedures for making byelaws

### Introduction

- 3.1. By virtue of the 2012 Act, byelaws in Wales are subject to one of two procedures. The 2012 Act introduces a new procedure which removes the need for confirmation by the Welsh Ministers for byelaws specified in Part 1 of Schedule 1 to the 2012 Act. The 2012 Act also replaces and modifies the previous process under the 1972 Act for byelaws requiring confirmation by the Welsh Ministers (see section 7 of the 2012 Act and the relevant part of this guidance set out below). Apart from the confirmation requirement applicable to some byelaws, the process is very similar for both procedures. An illustrative flowchart is at Annex B.

### The Provisions of the 2012 Act

#### Byelaws not requiring confirmation

- 3.2. Section 6 of the 2012 Act provides that any byelaw made by an authority under an enactment listed in Part 1 of Schedule 1 to the 2012 Act does not require confirmation by the Welsh Ministers. Section 6 of the 2012 Act prescribes the procedure for making a byelaw which does not require confirmation.
- 3.3. There are three stages to the procedure for byelaws that do not require confirmation:
- a) Publication of an 'initial written statement' and consultation with interested persons;
  - b) Publication of the authority's decision and draft byelaws, if appropriate; and
  - c) Making and the coming into effect of byelaws.
- 3.4. Section 6 also provides that a byelaw made by an authority to amend or revoke an existing byelaw made under an enactment listed in Part 1 of Schedule 1 to the 2012 Act does not require confirmation by the Welsh Ministers and is subject to the procedure prescribed in Section 6.
- 3.5. The enactments included in Part 1 of Schedule 1 at the time of writing this guidance can be found at Annex A.
- 3.6. Under Section 9 of the 2012 Act, Welsh Ministers may, by order, amend Part 1 of Schedule 1 by adding or subtracting from the list of enactments, or by amending the type of authority that may make byelaws without confirmation. An authority should not, therefore, rely on Annex A as a definitive statement of the law at any given time.

## Byelaws requiring confirmation

- 3.7. Any byelaw made by an authority under an enactment not listed in Part 1 of Schedule 1 to the 2012 Act, requires confirmation by the Welsh Ministers. Section 7 replaces, with modification, provisions in section 236 of the 1972 Act and prescribes the procedure for making a byelaw which does require confirmation. Section 7 does not apply to the extent that the enactment conferring the specific power to make the byelaw makes different provision in relation to one or more of the following:
- a) a requirement to submit byelaws for confirmation,
  - b) publication of a notice of intent to make a byelaw,
  - c) publication of the byelaw, or making copies of the byelaw available.

In those circumstances and to that extent, the existing provisions will prevail.

- 3.8. There are three stages to the procedure for byelaws that do require confirmation:
- a) Publication of an 'initial written statement' and consultation with interested persons;
  - b) Publication of the authority's decision and the proposed byelaws, if appropriate; and
  - c) Making, confirming and the coming into effect of the byelaws.
- 3.9. Section 7 also provides that a byelaw made by an authority to amend or revoke an existing byelaw made under an enactment not listed in Part 1 of Schedule 1 to the 2012 Act requires confirmation by the Welsh Ministers and is subject to the procedure defined in Section 7.

## **Statutory Guidance**

- 3.10. Given the power of the Welsh Ministers under section 9 of the 2012 Act to add/subtract enactments to Part 1 of Schedule 1, authorities should always refer back to the latest version of the 2012 Act to ensure that the appropriate procedure is followed. This should be available from your legal department.
- 3.11. When making a byelaw that does not require confirmation, authorities should refer to the statutory guidance in this document, in particular section 6 of the 2012 Act and Part 3 of this guidance.
- 3.12. When making a byelaw that requires confirmation, authorities should refer to the statutory guidance set out in this document, in particular section 7 of the 2012 Act and Part 3 of this guidance.

## Consultation

### Introduction

- 3.13. Consultation is a key part of the byelaw making process and can make the difference between a smooth implementation and a difficult protracted one.
- 3.14. Whilst consultation prior to a decision by an authority to make a byelaw was considered good practice under the 1972 Act confirmation procedure, it was not a statutory requirement. The 2012 Act provides that authorities **must** consult with interested persons initially to determine whether a byelaw is the most appropriate way of addressing a specific problem. At least six weeks before the byelaw is submitted for confirmation, notice of the legislating authority's intention to do so must be published.
- 3.15. Consultation is required for byelaws which require confirmation and those which do not. However if byelaws which require confirmation are subject to an existing provision regarding the publication of a notice of intent to make the byelaw, or the publication of the byelaw then these existing provisions will apply.

### The Provisions of the 2012 Act

- 3.16. The 2012 Act prescribes that prior to making a byelaw under the provisions of either section 6 (byelaws not requiring confirmation) or section 7 (byelaws requiring confirmation) of the 2012 Act, an authority must:
- a) publish on the authority's website an initial written statement which describes the issue which the authority thinks may be addressed by making a byelaw; and
  - b) consult any person (including, where applicable, a community council) who the authority thinks is likely to be interested in, or affected by, the issue.
- 3.17. Following the consultation, the authority must consider the responses and decide whether making a byelaw is the most appropriate way of addressing the issue.
- 3.18. The authority must then publish on its website a second written statement which contains:
- a) the initial written statement;
  - b) a summary of the consultation and the responses; and
  - c) its decision – either to introduce byelaws or to address the problem through other means - and the reasons for that decision.

## Statutory Guidance

- 3.19. Before making byelaws, an authority must produce and publish, on their website, an initial written statement which describes the issue or problem they are seeking to address. This statutory guidance does not prescribe what form this initial written statement should take, however it is recommended that it clearly defines:
- a) the nature, extent and incidence of the issue or problem;
  - b) the area in which the issue or problem is being experienced; and
  - c) all reasonably practicable options, including but not limited to a byelaw, for resolving the issue or problem.
- 3.20. The Home Office's Anti Social Behaviour, Crime and Policing Act received Royal Assent on 13 March 2014. This legislation introduced, amongst other measures, Public Space Protection Orders and Community Protection Notices which are geared specifically to the relevant behaviour or nuisance and replace measures such as Alcohol Control Zones and Dog Control Orders. Before consulting, authorities should consider whether these and other such means of regulation are more appropriate than making byelaws
- 3.21. On some occasions, consultation may give rise to a voluntary resolution of the problem, avoiding the need for byelaws to be adopted. In a real life example, the use of silly string at certain carnivals was a nuisance to those attending and sometimes was even dangerous when sprayed on car windscreens. Initially, the council explored using byelaws to overcome the problem but, on receiving advice from Welsh Government officials, agreed that this could be excessively bureaucratic. The problem was resolved through effective communication stressing that silly string was not allowed and through the co-operation of those attending these carnivals.
- 3.22. If considering introducing byelaws, the authority needs to be satisfied that it has the powers to make the byelaws and that it does not duplicate or contradict existing legislation. It should keep abreast of new developments in legislation. Throughout the consultation process and in making the decision which follows it, it should keep an open mind as to whether a byelaw is the most appropriate response to an issue.
- 3.23. When undertaking the consultation, an authority needs to identify, as far as practicable, any persons or organisations whom they think may be interested in, or affected by, the underlying issue. This statutory guidance does not prescribe the form this consultation should take. However, authorities should seek to ensure the consultation is inclusive and considers the differing needs of potential respondents. When planning a consultation process, authorities should have regard to best practice on conducting consultations (see below). Where applicable



the consultation must be issued to any community council(s) whose area is affected by the issue to be addressed.

- 3.24. Examples of the types of consultees which may be included are community groups; special interest groups; other unitary authorities; professional bodies; consumer organisations and trade associations as well as residents, businesses and other organisations directly affected by the issue and the general public.
- 3.25. The Welsh Local Government Association, One Voice Wales and the Welsh Government have endorsed the National Principles for Public Engagement developed by Participation Cymru. Participation Cymru is a partnership of public and third sector organisations that is hosted by the Wales Council for Voluntary Action. They work with public service organisations in the public, private and third sectors to achieve better public engagement in the design, development and delivery of citizen-centred services for the people of Wales.
- 3.26. Legislating authorities are encouraged to have regard to the National Principles and associated guidance when preparing to carry out consultations under the 2012 Act. They can be found on Participation Cymru's website: [www.participationcymru.org.uk](http://www.participationcymru.org.uk)
- 3.27. The purpose of the initial written statement and consultation is to establish the most appropriate means of addressing the underlying issue: the making of a byelaw should not be presumed to be the only solution at this stage in the process. Other solutions which could be considered include using existing legislation; referring to good practice / case studies; following Welsh Government policy; running awareness initiatives; and following codes of conduct.
- 3.28. The consultation should remain open for a reasonable period of time (12 weeks is the standard consultation period followed by the Welsh Government) to allow as many interested persons as possible the opportunity to respond.
- 3.29. Following the consultation the authority must consider all of the responses and decide whether making a byelaw is the most appropriate way of addressing the issue. The authority is then required to publish, on its website, a second written statement which must contain:
  - a) the initial written statement;
  - b) a summary of the consultation and the responses;
  - c) the authority's decision; and
  - d) the reasons in support of that decision.
- 3.30. On some occasions, consultation responses may indicate a more appropriate alternative to making a byelaw, and the authority should conscientiously consider all responses before taking a decision. It is

also possible that the consultation may give rise to a voluntary resolution of the problem without the need for byelaws to be adopted.

- 3.31. Some authorities, such as a community council, may not currently have a website. However, in time, all community councils will be expected to publish information via a website. The Local Government (Democracy) (Wales) Act 2013 (the “Democracy Act”) provides that every town and community council should, by the time the relevant section of the Democracy Act comes into force, provide their contact and membership details and records of their proceedings via the internet. The Democracy Act does not require each town or community council to have its own website. In many cases, it may be possible for the local principal council or a membership organisation such as One Voice Wales to host the website. The Democracy Act also provides for the Welsh Government to issue guidance on this matter.
- 3.32. The Democracy Act was passed by the National Assembly for Wales on 18 June 2013 and received Royal Assent on 30 July 2013. It is anticipated that the website provisions will be brought into force with effect from May 2015.

## **Publication of an authority’s intention to make a byelaw, or submit a byelaw for confirmation**

### **The Provisions of the 2012 Act**

- 3.33. Where, following consultation, the authority decides to make a byelaw, the 2012 Act requires that at least six weeks before the byelaw is made or submitted for confirmation, the authority must publish notice of their intention to do so:
- a) in one or more local newspapers circulating in the area to which the byelaw is to apply; and
  - b) on the authority's website.
- 3.34. In addition, the 2012 Act requires that for at least six weeks before the byelaw is made or submitted for confirmation, the authority must ensure that:
- a) a draft of the byelaw is published on the authority's website (in the case of byelaws not requiring confirmation);
  - b) the byelaw is published on the authority’s website (in the case of byelaws requiring confirmation);
  - c) a copy is deposited at a place within the authority's area;
  - d) in the case of byelaws made by Natural Resources Wales, a copy is deposited in the area of each county or county borough to whose area the byelaw applies;
  - e) a copy is open to public inspection at all reasonable hours without payment; and

- f) where applicable, a copy is sent to all community councils whose areas the authority thinks are likely to be affected by the byelaw.
- 3.35. Finally, the authority must give a copy to any person who applies for a copy. The authority may require that person to pay a reasonable fee.

### **Statutory Guidance**

- 3.36. Notice as described above should be placed in a local newspaper (as a minimum) notifying the public of the intention to make a byelaw. However, authorities should consider using a range of media, including social media, so that its proposals receive wide circulation.
- 3.37. Hard copies of draft byelaws must also be made accessible to the public. Authority headquarters are not always easily reached by foot or public transport. In addition community councils very often do not have official premises. For these reasons, authorities should ensure that copies of byelaws are available for public inspection in locations reasonably proximate to the areas affected by them. Suitable venues may include local libraries, leisure centres and other similar authority controlled community buildings.
- 3.38. After the consultation period has come to an end, the authority will decide whether to make the byelaw (or in the case of a byelaw requiring confirmation, to seek confirmation) and, if so, whether any modifications are required. This decision will take into account any objections/representations received on the draft byelaws during the consultation period. The authority may wish to note these objections, but proceed with the byelaws. Conversely, the authority may wish to acknowledge that the objection is valid and at the end of the consultation period decide to scrap or amend the draft byelaws. If the modification is more than a minor amendment it may be necessary to repeat the 6 week consultation phase again.

## **Making the byelaw and the coming into force date**

### **The Provisions of the 2012 Act**

- 3.39. Where the byelaws are not subject to the confirmation procedure, the 2012 Act prescribes that an authority may not make a byelaw later than six months after the date they published the notice of their intention to do so.
- 3.40. The 2012 Act requires that byelaws must be made under the common seal of the authority, or in the case of community council without a seal, signed by two members of the council. This requirement does not apply where the enactment under which the byelaw is being made makes different provisions in relation to the signature or sealing of the byelaw.

- 3.41. For byelaws not requiring confirmation, the 2012 Act provides that the authority may set the date on which the byelaws will come into force. If no date is fixed, the byelaw will come into force at the end of one month from the date the byelaw was made.
- 3.42. For byelaws requiring confirmation, the 2012 Act provides that the confirming authority may set the date on which the byelaws will come into force. If no date is fixed, the byelaw will come into force at the end of one month from the date the byelaw was confirmed.

### **Statutory Guidance**

- 3.43. In practice, the seal should be placed on the last page of the byelaw, after any schedules or plans that form part of the byelaw. The byelaw should also be signed and dated.
- 3.44. Where the byelaw requires confirmation, adequate space, at least 15 centimetres (6 inches), should be left after the seal to enable the byelaws to be signed on behalf of the Welsh Minister once confirmed.
- 3.45. In the case of a community council without a seal, they should be signed by two members of the council.

### **Submitting a byelaw for confirmation**

#### **Introduction**

- 3.46. The guidance below applies to byelaws made by an authority that require confirmation by the relevant confirming authority.

#### **The Provisions of the 2012 Act**

- 3.47. The 2012 Act requires that once an authority has made a byelaw under an enactment not listed in Part 1 of Schedule 1 to the 2012 Act, that byelaw must be submitted to the confirming authority. For the purposes of this Act, the confirming authority is:
- a) the person specified in the enactment under which the byelaw was made as 'the person who is to confirm the byelaw'; or
  - b) the Welsh Ministers.
- 3.48. The functions of the Welsh Ministers as a confirming authority are exercisable concurrently with the Secretary of State.
- 3.49. The confirming authority may confirm, or refuse to confirm, any byelaw submitted by an authority.

## Guidance

- 3.50. The authority must send two sealed copies of the byelaw and a copy of the press notice, publicising their intention to submit the byelaw for confirmation, to the confirming authority. In most circumstances, the byelaws will be made under devolved legislation and in practice the confirming authority will be the Welsh Ministers rather than the Secretary of State. Prior to submission, the authority should ensure that: the byelaws are the correct version; and signatures and seals are provided in the correct places (please refer to paragraphs 3.43 to 3.45).
- 3.51. Prior to confirming the byelaws, the confirming authority will seek to ensure that:
- a) the draft byelaws are intra vires and do not duplicate or conflict with general law, Welsh Government legislation, existing byelaws or a relevant local Act;
  - b) the information in the second written statement supports the making of these draft byelaws and does not conflict with Welsh Government policy; and
  - c) there are no third party objections remaining that have not been resolved.
- 3.52. As a general principle, it is for the authority to decide the necessary and appropriate byelaws for its area. Provided there is no legal problem and no conflict with general government policy, the Welsh Ministers will not oppose or query a byelaw simply because its judgement of what is necessary or appropriate differs from the authority's. Nor shall the Welsh Ministers oppose or query aspects of byelaws which relate to purely local concerns, such as the precise areas to which they will apply. The Welsh Ministers will assume that the wording of any byelaw has been checked and is deliberate: this assumption will apply to any omissions or inclusions and any statement of areas to which the byelaws will extend. Unless an apparent error has legal implications or affects a point of principle, the Welsh Ministers will not take it up with the authority. However, where an apparent error has legal implications or affects a point of principle, the Welsh Ministers may refuse to confirm the byelaws and/or suggest changes which the authority would need to make in order for the byelaws to be confirmed.
- 3.53. In such a case, the authority would need to seal the byelaws again once the changes have been made and publish the notice and byelaws for six weeks before submitting for confirmation once again.
- 3.54. Once the Welsh Ministers have confirmed the byelaws the final signed copies will be issued to the authority with the date of coming into force.

## **Publication of a byelaw once made or confirmed**

### **The Provisions of the 2012 Act**

- 3.55. The 2012 Act prescribes that once a byelaw is made, or where applicable confirmed, the authority must:
- a) publish the byelaw on the authority's website;
  - b) deposit a copy of the byelaw at a place in the authority's area;
  - c) ensure that the copy is open to public inspection at all reasonable hours without payment;
  - d) give a copy of the byelaw to a person who requests it (the authority may charge the person a reasonable fee).
- 3.56. The proper officer of a local authority must send a copy of a byelaw once made, or where applicable confirmed, to the proper officer of the council of every community to which the byelaw applies.
- 3.57. The proper officer of the community council must ensure that a copy of a byelaw once made, or where applicable confirmed, is:
- a) deposited with the public documents of the community; and
  - b) open to public inspection.
- 3.58. In the case of byelaws made by a National Park authority, the proper officer of the authority must send a copy of a byelaw once made, or where applicable confirmed, to the proper officer of:
- a) the council for every county borough or county whose area includes the whole or part of the National Park; and
  - b) the council of every community whose area includes the whole or part of the National Park.
- 3.59. In the case of byelaws made by Natural Resources Wales<sup>2</sup> under the National Parks and Access to the Countryside Act 1949, it must send a copy of the byelaw once made, or where applicable confirmed, to the proper officer of:
- a) the council of every county borough or county to whose area the byelaw applies; and
  - b) the council of every community to whose area the byelaw applies.

For the purposes of the 2012 Act, 'proper officer' refers to the officer duly authorised by an authority to serve that purpose for that authority.

### **Statutory Guidance**

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<sup>2</sup> Please see earlier footnote about the need to amend the 2012 Act to replace references to the Countryside Council for Wales with references to Natural Resources Wales.

- 3.60. The place where the byelaws are deposited must be accessible to members of the public within that authority area. For this reason, it need not be the authority's headquarters but may be a public building or amenity such as the local library or leisure centre.

## Revoking Byelaws

### Introduction

- 3.61. Authorities have powers, implied or otherwise, to amend or revoke byelaws previously made by them under enabling legislation. However, Section 4 of the 2012 Act allows an authority to revoke a byelaw previously made by it where the power to do so no longer exists. Section 5 provides a power for the Welsh Ministers to remove obsolete byelaw provisions. An authority will be able to replace an obsolete byelaw with a new byelaw.

### The Provisions of the 2012 Act

- 3.62. Section 4 of the 2012 Act recasts, in part, section 236B of the 1972 Act. It provides a power for an authority to make a byelaw revoking a previous byelaw where there exists no other power to do so.
- 3.63. Where the byelaw being revoked was originally made under an enactment listed in Part 1 of Schedule 1 to the 2012 Act, the byelaw to revoke it **does not** require confirmation. However, if the byelaw being revoked was originally made under an enactment not listed in Part 1 of Schedule 1 to the 2012 Act, the byelaw to revoke it **does** require confirmation.
- 3.64. Section 5 of the 2012 Act recasts, in part, section 236B of the 1972 Act. It confers a power on the Welsh Ministers to make an order revoking a byelaw which they conclude is obsolete.
- 3.65. The 2012 Act prescribes that prior to making an order to revoke a byelaw the Welsh Ministers must consult with any person, including a community council who they think is likely to be interested in, or affected by, the revocation of the byelaw.
- 3.66. An order by the Welsh Ministers may make different provisions for different areas, including different provision for different localities and for different authorities.

### Statutory Guidance

- 3.67. The Welsh Ministers do not anticipate conducting a systematic review of extant byelaws in Wales. Consideration will be given to using their powers under Section 5 when they are requested by an authority to do so because the power to revoke a particular obsolete byelaw, or the

identity of the authority which should otherwise revoke the byelaw, is unclear.

## **Evidence of Byelaws**

### **Introduction**

- 3.68. Members of the public and businesses may ask for certified copies of byelaws. This may be to understand and ensure their own compliance with byelaws, or for other purposes, such as reporting non-compliance by others or in relation to litigation or disputes.
- 3.69. Section 19 of the 2012 Act provides information on what constitutes a certified copy and how a certified copy is to be made.

### **The Provisions of the 2012 Act**

- 3.70. The 2012 Act prescribes that the production of a certified copy of a byelaw made by an authority is, until the contrary is proved, sufficient evidence of the byelaw.
- 3.71. For the purposes of section 19 of the 2012 Act, a certified copy of a byelaw is a printed copy of the byelaw that is endorsed with a certificate purporting to be signed by the proper officer of a legislating authority stating:
- a) that the byelaw was made by the authority;
  - b) that the copy is a true copy of the byelaw;
  - c) that on a specified date the byelaw was confirmed by the authority named in the certificate or, as the case may be, was sent to the confirming authority and has not been disallowed;
  - d) the date, if any, fixed by the confirming authority for the coming into effect of the byelaw.
- 3.72. The requirements in (c) and (d) do not apply if the byelaw was not subject to confirmation.

## **Model Byelaws**

### **Introduction**

- 3.73. A number of different sets of model byelaws and associated guidance notes have been, or are being developed, to support the introduction of certain byelaws. These provide authorities with a template to use when drafting byelaws, setting out appropriate wording for byelaws on a number of different subjects. These seek to provide a useful and efficient guide for authorities when making byelaws, acting as a point of reference and guide to best practice. [The models will be available on the Welsh Government website in due course.]



## **The Provisions of the 2012 Act**

- 3.74. The 2012 Act does not make any provision in relation to model byelaws.

### **Guidance**

- 3.75. Where an authority decides that a byelaw is appropriate, it is recommended that the authority first ascertains whether the Welsh Government has published a model byelaw and associated guidance. These will be available on the Welsh Government website following the commencement of the Act in 2015.. An authority should consider adopting a model byelaw, in whole or part, rather than drafting their own byelaws from scratch. Following model byelaws, where available, will reduce the risk of drafting problems or of the implementation of byelaws which are not fit for purpose. Additionally, the detailed guidance that accompanies each model set will help legislating authorities by providing support information, contact details for relevant associations which may need to be consulted and other practical pointers.
- 3.76. A set of model byelaws may cover any number of potential matters. Authorities should note that, in a number of the sets, some of the individual model byelaws are optional and only those which are needed and appropriate should be adopted.
- 3.77. It is acknowledged that model byelaws may not address every particularly local issue or problem that may arise in any given community. Consequently, the use of model byelaws is not compulsory. Subject to exceptions discussed below, the models may be added to or amended by authorities in the light of experience, demand and changing circumstances. If amending or adapting the models, authorities should consider taking legal advice on the effect of changes and satisfy themselves that a proposed byelaw would not be ultra vires.
- 3.78. Although most of the model byelaws are suitable for amendment, authorities should be aware that certain sets of model byelaws, such as those relating to pleasure fairs made under Section 75 of the Public Health Act 1961 should be adopted as a package, without deviation. These byelaws contain complex and detailed technical information which is deemed essential to preserve public safety. Uniform standards should be maintained as far as possible both for the safety of the public and because those operating travelling fairs cannot be expected to familiarise themselves with a variety of byelaws. Local variation on matters of public safety is not desirable.

**Part 4**  
**Enforcement of Byelaws**

## **General Principles**

- 4.1. There are two principal enforcement routes available to legislating authorities: enforcing fines through the Magistrates' Courts or issuing FPNs. The latter may achieve the desired results on its own but may need to be backed up by the former.
- 4.2. The use of FPNs has been offered as an alternative method of enforcement in the 2012 Act. The benefits of FPNs include cost savings compared to enforcement through the Magistrates' Courts. Use of FPNs is intended to ensure parity with enforcement measures for other low level offences such as littering in the Clean Neighbourhoods and Environment Act 2005. It also provides a simple and direct process which can save time and personnel input.
- 4.3. The use of FPNs and the issuing of fines through the Magistrates' Courts are tools that may be used to tackle offences against byelaws. Other ways of promoting compliance with byelaws and hopefully avoiding the need to issue FPNs and fines include awareness campaigns; improved signage and guidance; and communication in newsletters and websites.

## **Offences against Byelaws - Fines**

### **The Provisions of the 2012 Act**

- 4.4. Section 10 of the 2012 Act recasts section 237 of the 1972 Act regarding the fine payable provided by the Criminal Justice Act 1982. The change from the 1972 Act is that if no sum is fixed by the enactment, level 2 on the standard scale is prescribed. The 1972 Act prescribed the sum of £50 for the same situation.
- 4.5. Byelaws made by an authority may provide that anyone contravening the byelaw is liable, on summary conviction, to a fine.
- 4.6. The 2012 Act prescribes that such a fine must not exceed the amount fixed by the relevant enactment or, if no sum is fixed, level 2 on the standard scale (currently £500) is the current default position. Similarly, the fine for conviction of a continuing offence is the amount fixed in the relevant enactment or £5 for each day during which the offence continues.

### **Statutory Guidance**

- 4.7. Summary offences are dealt with by Magistrates and are usually less serious criminal offences such as minor theft, criminal damage, public disorder and motoring offences. The defendant is not usually entitled to trial by jury. Magistrates are trained, unpaid members of their local community who work part time.

- 4.8. The maximum punishment for a single summary offence is six months in prison, and / or a fine of up to £5000.
- 4.9. Levels on the standard scale are, at the time of publication, as follows:
- Level 1 £200
  - Level 2 £500
  - Level 3 £1000
  - Level 4 £2500
  - Level 5 £5000
- 4.10. It would be unlikely to be cost-effective to pursue small fines. Home Office statistics suggest it can take anything from 33 days to 320 days to recover financial penalties owing. In order to address this issue, the 2012 Act fixes £500 or level 2 as the default position and this helps to ensure that it is cost-effective and worthwhile to pursue fines through the courts.

## **Power to offer fixed penalties for offences against certain byelaws**

### **Introduction**

- 4.11. Whilst the 2012 Act retains the option of enforcement via the Magistrates' Court, it also introduces an alternative, more efficient, option for enforcement through FPNs.

### **The Provisions of the 2012 Act**

- 4.12. Section 12 of the 2012 Act enables an authority to use fixed penalties as an alternative means of enforcing byelaws made under the enactments listed within Part 2 of Schedule 1 to the 2012 Act.
- 4.13. Subsection (2) provides that an authorised officer of an authority may issue a FPN offering a person the opportunity of discharging any liability to conviction for an offence against a byelaw made by that authority by the payment of the amount specified in the notice.
- 4.14. Subsection (3) makes the same provision for an authorised officer of a community council to issue FPNs in relation to offences against byelaws committed in its area, even if the byelaw was made by a legislating authority other than the community council.
- 4.15. Subsection (4) provides that a fixed penalty is payable to the legislating authority whose officer issued the notice.
- 4.16. Subsection (5) provides that, following receipt of a FPN, the recipient has fourteen days in which to pay the specified fine, and thus avoid attending the Magistrates' Court in respect of the offence.

- 4.17. Subsection (6) provides that the FPN must give sufficient information to the recipient so that the nature of the offence is clear.
- 4.18. Subsection (7) provides that a FPN must also detail the period during which proceedings will not be taken for the offence, the amount of the fixed penalty and the person to whom and the address at which the fixed penalty may be paid.
- 4.19. Subsection (8) provides for a method of payment of the fixed penalty by way of pre-paying and posting a letter, although recognising that other methods might be valid.
- 4.20. Subsection (9) details that where a letter is sent discharging payment the payment will be deemed to have been made at the time at which the letter would be delivered in the ordinary course of post.
- 4.21. Subsection (10) provides the Welsh Ministers with a regulation making power to specify the form of the FPN issued pursuant to this section.
- 4.22. Subsection (11) provides that in the event of proceedings a certificate signed on behalf of the chief finance officer of an authority which states the payment of a fixed penalty has been received, or not, as the case may be, will be deemed evidence of the facts stated.
- 4.23. Subsection (12) makes provision about which persons are authorised to issue FPNs. "Authorised officers" will be restricted to those authorised in writing by the legislating authority to carry out the function. This may be a direct employee of the legislating authority, or a person, or an employee of a person, with whom the legislating authority has a contract for the enforcement of byelaws. By prior agreement with the chief police officer for the area under the terms of provisions in Schedules 4 and 5 of the Police Reform Act 2002, the power of an authorised officer may also be exercised by a Police Community Support Officer or another accredited person.
- 4.24. Subsection (13) provides that the Welsh Ministers may issue regulations to prescribe the criteria to be satisfied by a person before a community council may authorise them for the purpose of giving notices.

### **Statutory Guidance**

- 4.25. Fixed penalties can provide enforcement agencies with an effective and visible way of responding to offences against byelaws. Experience of issuing FPNs for low level environmental offences has shown that the public generally welcomes the use of fixed penalties, provided that they are issued sensibly, enforced fairly, are set at an amount proportionate to the seriousness of the offence and are seen as a

response to genuine problems. However, it is important that the following principles are followed.

### Enforcement Strategy

- 4.26. Fixed penalties should be part of a wider enforcement strategy. They should be used to ensure that resources are focused on priority areas and that an appropriate balance is struck between resources devoted to issuing and enforcing fixed penalties and those spent on prosecutions, both for non-payment of fixed penalties and for more serious incidents.
- 4.27. The enforcement strategy should also be used to develop standardised fixed penalty procedures to be followed by all those with powers to issue fixed penalties, with guidance on the circumstances in which an FPN should be issued. It is good practice to consult the public on the contents of an enforcement strategy, particularly if FPNs have not previously been used, or used widely, and make the adopted strategy available to the public by (as a minimum) publishing it on the website of the authority.
- 4.28. Authorities should consult with any other agency, such as private contractors or the police, dealing with enforcement in the area and seek to agree working protocols. In particular local authorities must give consideration to their capacity to process any fixed penalties issued on their behalf by Police Community Support Officers or an accredited person under the Police Reform Act 2002, including prosecuting unpaid fixed penalties.

### Non-Payment of Fixed Penalties

- 4.29. FPNs may be issued when an enforcing officer believes that an offence has been committed, and give the alleged offender an opportunity to avoid prosecution by payment of the penalty. It is essential, therefore, that they are only issued where there is sufficient evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up.
- 4.30. Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment. The need to pursue unpaid FPNs must be considered in the development of an enforcement strategy and the necessary resources made available. It is not acceptable for an authority to decide after an FPN has been issued that it does not have the resources to prosecute if the notice is unpaid.

### Starting to issue FPNs

- 4.31. It is recommended that authorities considering issuing FPNs for the first time allow a well-publicised lead-in period before any notices are

issued. This should help ensure public support for fixed penalties. During this time, when an offence is committed, enforcement officers should not issue any FPNs; if the offence is serious they should report the offender with a view to prosecution; in other cases they should issue a warning that in future similar offences may lead to FPNs (or prosecution). This will help raise awareness within the community and should help manage the public's perception.

- 4.32. Authorities should also develop a communication strategy designed to raise awareness in preparation for the implementation of the FPN scheme. Such a strategy could make use of local media, and authorities with websites could publish enforcement statements, details of the legislation and what powers the authority intends to use, and explain why. Any enforcement strategy, including a strategy for the use of FPNs, will need clearly defined and agreed objectives. These objectives need to state what offences are going to be tackled, and which powers are to be used and to what end. Ultimately, the objectives should articulate what the authority is seeking to achieve by using the powers and issuing FPNs.
- 4.33. Officers and members of the authority could raise awareness in the community by, for example, visiting schools, colleges and community meetings, and leaflets could be distributed to households.

### Training

- 4.34. The points above apply equally to community and town councils that decide to enforce byelaws through FPNs. In particular, they must ensure that they have adequate resources to pursue unpaid fixed penalties. Please also refer to Part 5 of this guidance.
- 4.35. Authorities should ensure that any staff involved in enforcement, including management personnel, are adequately trained before FPNs are issued following the introduction of the new fixed penalty provisions. Specific additional guidance applies to community councils: see paragraphs 5.2 to 5.10 below.

## **Amount of fixed penalty**

### **Introduction**

- 4.36. Section 13 provides for the level of fixed penalties payable in respect of a breach of byelaws that may be specified by the legislating authority. The section confers on the Welsh Ministers the power to make regulations specifying the range within which the amount of any fixed penalty must fall.
- 4.37. Where a range has been specified, a legislating authority may choose to set an amount within the range. Where the legislating authority does not specify a penalty for breach of a byelaw, the section provides for a

default amount of £75. This section empowers the Welsh Minister to make an order to change the default amount as necessary, so that the level remains in line with similar low-level offences.

### **Statutory Guidance**

- 4.38. The Local Government Byelaws (Fixed Penalties Notices) (Wales) Regulations 2014 set a range of £50 to £150. This is to enable legislating authorities to set fines that are proportionate to addressing a wide range of offences.
- 4.39. Care should be taken in setting the level of fines that the public do not see FPNs simply as a means of the authority making money. Officers of the authority could raise public awareness by, for example, visiting schools, colleges and community meetings, distributing leaflets to households and placing notices in newspapers circulating in the areas to which the byelaws relate. These could be effective ways of letting people know about the proposed intention to use FPNs, the fines and the reasons for using this approach.

## **Power to require name and address in connection with a fixed penalty**

### **Introduction**

- 4.40. Under section 14 of the 2012 Act, an authorised officer may require the name and address of the person to whom an FPN is issued. It is an offence for the person to refuse to do so or to supply a false name or address. The person guilty of this offence is liable on summary conviction to fine of not more than level 3 on the standard scale, at the time of writing this is £1000.

### **Statutory Guidance**

- 4.41. Evidence is vital in order to enforce FPNs.
- 4.42. The job of enforcing against byelaw offences requires an understanding of the relevant legislation as well as an ability to follow specific guidelines when gathering evidence. An ability to deal with the members of the public in situations that may be difficult is also important. Authorities may already have some experience of operating FPN regimes relating to the issue and enforcement of FPNs under the Clean Neighbourhoods and Environment Act 2005 and, if so, should draw on that experience.
- 4.43. If there is any doubt over someone's identity, the enforcement officer should see if it is possible to verify the individual's identity.
- 4.44. The fine for the offence of failing to co-operate is high because it undermines the ability of the legislating authority to enforce the law.



- 4.45. Enforcement officers need to be trained in dealing with potentially abusive or aggressive members of the public.
- 4.46. Whatever training an authority decides to offer to enforcement officers, it can either be delivered in house or by an external provider.

## **Use of fixed penalty receipts**

### **Introduction**

- 4.47. Section 15 of the 2012 Act provides that the authority must have regard to the desirability of using its fixed penalty receipts for the purpose of combating a nuisance for the prevention of which it has made a byelaw.

### **Statutory Guidance**

- 4.48. The Welsh Government expects that the proceeds from FPNs will be used to fund solutions to address the nuisances for which any byelaw has been made. This does not mean that legislating authorities are absolutely required to use receipts from the contravention of a byelaw for combating the nuisance that particular byelaw is concerned with. Examples of activities that receipts may be used for include public awareness campaigns, signage and staff training. The recycling of fines into measures to help combat nuisances is an effective way of ring fencing such funds for activities which may not normally be allocated council funding.

**Part 5**  
**Community Councils**

## Guidance to Community Councils on Fixed Penalty Notices

### The provisions of the 2012 Act

- 5.1. Section 12 (13) provides that the Welsh Ministers may by regulations prescribe conditions to be satisfied by a person before a community council may authorise the person in writing for the purpose of giving FPNs under section 12 of the 2012 Act.

### Statutory Guidance

- 5.2. The Welsh Government recognises that community councils do not usually undertake an enforcement function and may therefore lack the personnel and expertise to do so effectively and efficiently. The Welsh Government considers, therefore, that the most appropriate course of action is for community councils to collaborate with principal councils, the police or private sector enforcement agencies who have relevant knowledge, expertise and experience of issuing FPNs.
- 5.3. The Welsh Ministers' present view is that it is not necessary or proportionate to make regulations under section 12 (13) of the 2012 Act. Instead, community councils considering enacting byelaws providing for them to issue FPNs are encouraged to consider the options summarised below. Welsh Ministers will keep under review whether or not it is necessary or desirable to make regulations prescribing such conditions.
- 5.4. The operational avenues open to community councils include:
- Collaboration with the principal authority within whose area the community council is located. The terms of such collaboration would be a matter for agreement between the two councils, but would typically need to identify, among other things, the byelaws to be enforced through FPNs, timings and frequency of patrols and the apportionment, if any, of staff costs;
  - Police Community Support Officers (PCSOs) under section 38 of the Police Reform Act 2002 or persons accredited under section 41 of that Act. The 2012 Act amends the Police Reform Act 2002 so that a PCSO or an accredited person may exercise the power of an authorised officer of an authority to issue FPNs for offences against byelaws. This arrangement requires the prior agreement of the Chief Police Officer for the area, who would need to ensure the PCSO or accredited person was designated with the relevant power.
  - Engagement of a specialist private contractor with relevant experience or knowledge of issuing FPNs to carry out enforcement duties. Many principal authorities engage an appropriate third party organisation

which carries out this enforcement function on their behalf. This is a route which is also open to community councils.

- Own staff: Depending on the size and capability of the community council, it may decide that it already has the staff who can take on enforcement as an additional responsibility. It needs to be remembered that not everyone is suited to do enforcement work, and amongst other things, issue FPNs. The council may decide that it is more appropriate to employ staff whose sole role is to undertake enforcement work. Depending on the number of hours the “enforcement officer” is contracted to do, this may come at a high cost.
- 5.5 Community councils considering contracting with other parties should consider whether public procurement obligations under the law governing procurement by public bodies apply to the process for awarding any contract for provision of FPN-related services.
- 5.6 It is the responsibility of community councils to ensure that the person they are intending to authorise to issue FPNs is sufficiently trained. This would apply should the community council wish to authorise its own staff to carry out enforcement work. There are many sources of training provision available including:
- Training carried out by enforcement officers at unitary authorities which may on request be offered to community council personnel.
  - Training courses offered by independent organisations such as the Chartered Institute of Environmental Health; Keep Britain Tidy; Daniel Training; Ellis Ford Associates; Mallard Consultancy; and Bond Solon. The enforcement officers at the unitary authority usually keep lists of these training providers and will be able to provide up to date information. Please see Annex C for contact details for the above organisations.
- 5.7 The council would also need to consider legal issues which may arise including, but not limited to, obligations in relation to procurement of services. Authorities considering engaging a third party organisation to carry out such a service may also wish to consider whether the Transfer of Undertakings (Protection of Employment) Regulations apply.
- 5.8 When using enforcement officers from the principal authority, PCSOs or a person accredited by the Chief Police Officer for the area, the responsibility for ensuring that appropriate checks and training have been undertaken rests with the principal authority or Chief Police Officer as appropriate.
- 5.9 It may in certain circumstances be appropriate for community councils to collaborate with their local authority to make or amend byelaws to address a problem which is specific to the community council’s area. In

this case, the byelaws would be made by the local authority and the community council would not have responsibility for enforcement.

- 5.10 With regards to the allocation of revenue collected from the FPNs, should local authorities or PCSOs issue notices on behalf of the community council, this should be discussed by the parties concerned and a decision reached as to who retains the revenue.

## Schedule 1

## List of byelaw making powers

## Part 1 - Byelaws not requiring confirmation

The 2012 Acts list below are included in Part 1 of Schedule 1 of the 2012 Act at the time of writing this guidance, as such any byelaws made by a legislating authority under these Acts do not require confirmation by the Welsh Ministers.

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 68 of the Town Police Clauses Act 1847	Regulation of hackney carriages	County Council County Borough Council
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds	County Council County Borough Council Community Council
Section 6 of the Town Police Clauses Act 1889	Regulation of horse drawn omnibuses	County Council County Borough Council
Sections 12 and 15 of the Open Spaces Act 1906	Open spaces and burial grounds	County Council County Borough Council Community Council
Section 82 of the Public Health Acts Amendment Act 1907	Sea-shore	County Council County Borough Council
Section 83 of the Public Health Acts Amendment Act 1907	Promenades	County Council County Borough Council
Section 81 of the Public Health Act 1936	Prevention of certain nuisances	County Council County Borough Council
Section 82 of the Public Health Act 1936	Removal through streets of offensive matter or liquid	County Council County Borough Council
Section 87 of the Public Health Act 1936	Provision of public conveniences	County Council County Borough Council Community Council
Section 198 of the Public Health Act 1936	Provision of mortuaries and post-mortem rooms	County Council County Borough Council Community Council
Section 223 of the Public Health Act 1936	Regulation of baths, washhouses, swimming baths etc	County Council County Borough Council Community Council
Section 231 of the Public Health Act 1936	Public bathing	County Council County Borough Council Community Council

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 233 of the Public Health Act 1936	With respect to swimming baths and bathing pools not under the management of a local authority	County Council County Borough Council Community Council
Section 268 of the Public Health Act 1936	Prevention of nuisances in connection with the use of tents, vans etc	County Council County Borough Council
Section 270 of the Public Health Act 1936	Accommodation of hop-pickers and persons engaged in similar work	County Council County Borough Council
Section 75 of the Public Health Act 1961	Pleasure fairs and roller skating rinks	County Council County Borough Council
Section 76 of the Public Health Act 1961	Seaside pleasure boats	County Council County Borough Council
Section 77 of the Public Health Act 1961	Hairdressers and barbers	County Council County Borough Council
Section 19 of the Public Libraries and Museums Act 1964	Regulating the conduct of persons in libraries and museums and the use of those facilities	County Council County Borough Council
Section 41 of the Glamorgan County Council Act 1973	Heating undertakings	County council and count borough council
Section 35 of the Highways Act 1980	Regulation of walkways	County Council County Borough Council
Section 114 of the Highways Act 1980	Conduct of persons using or entering public conveniences provided by highway authorities	County Council County Borough Council
Section 14 of the Local Government (Miscellaneous Provisions) Act 1982	Acupuncture	County Council County Borough Council
Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	Tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	County Council County Borough Council
Section 60 of the Food Act 1984	Regulation and prevention of nuisances in market places	County Council County Borough Council Community Council
Section 31 of the Road Traffic Regulation Act 1984	Use of a road as a playground for children	County Council County Borough Council

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 57(7) of the Road Traffic Regulation Act 1984	Use of parking places	Community Council
Section 41 of the Clwyd County Councils Act 1985	Leisure centres	County and county borough council
Section 42 of the Clwyd County Councils Act 1985	Temporary structures	County and county borough council
Section 23 of the Housing Act 1985	Management, use and regulation of local authority houses, the use of land provided in connection with housing and as respects local authority lodging houses	County Council County Borough Council
Section 53 of the Swansea City Council (Tawe Barrage) Act 1986	Upstream river	County council (Swansea)
Section 31 of the Mid-Glamorgan County Council Act 1987	Porthcawl Harbour	County borough council (Bridgend)
Section 14 of the West Glamorgan Act 1987	Leisure centres	County council and county borough council
Section 36 of the West Glamorgan Act 1987	Policing and control of pedestrian highways	County council and county borough council
Section 41 of the West Glamorgan Act 1987	Temporary structures	County council and county borough council
Section 63 of the West Glamorgan Act 1987	Swansea Market	County council (Swansea)
Section 45 of the Dyfed Act 1987	Temporary structures	County council and county borough council
Section 16 of the Cardiff Bay Barrage Act 1993	Good rule and government of inland bay and harbour	County Council (Cardiff)
Section 2 of this Act	Good rule and government and the prevention and suppression of nuisances.	County Council County Borough Council



<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 4(1) of this Act in so far as it applies to byelaws made under any of the enactments listed in Part 1 of Schedule 1	Power to revoke byelaws	Legislating Authority

## **Part 2 – Byelaws in relation to which fixed penalties may be issued**

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 68 of the Town Police Clauses Act 1847	Regulation of hackney carriages	County Council County Borough Council
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds	County Council County Borough Council Community Council
Section 6 of the Town Police Clauses Act 1889	Regulation of horse drawn omnibuses	County Council County Borough Council
Sections 12 and 15 of the Open Spaces Act 1906	Open spaces and burial grounds	County Council County Borough Council Community Council
Section 82 of the Public Health Acts Amendment Act 1907	Sea-shore	County Council County Borough Council
Section 83 of the Public Health Acts Amendment Act 1907	Promenades	County Council County Borough Council
Section 18 of the Children and Young Persons Act 1933	Restrictions on employment of children	County council and county borough council
Section 20 of the Children and Young Persons Act 1933	Restrictions on the employment of children in street trading	County council and county borough council
Section 81 of the Public Health Act 1936	Prevention of certain nuisances	County Council County Borough Council
Section 82 of the Public Health Act 1936	Removal through streets of offensive matter or liquid	County Council County Borough Council

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 87 of the Public Health Act 1936	Provision of public conveniences	County Council County Borough Council Community Council
Section 198 of the Public Health Act 1936	Provision of mortuaries and post-mortem rooms	County Council County Borough Council Community Council
Section 223 of the Public Health Act 1936	Regulation of baths, washhouses, swimming baths etc.	County Council County Borough Council Community Council
Section 231 of the Public Health Act 1936	Public bathing	County Council County Borough Council Community Council
Section 233 of the Public Health Act 1936	With respect to swimming baths and bathing pools not under the management of a local authority	County Council County Borough Council Community Council
Section 268 of the Public Health Act 1936	Prevention of nuisances in connection with the use of tents, vans etc.	County Council County Borough Council
Section 270 of the Public Health Act 1936	Accommodation of hop-pickers and persons engaged in similar work	County Council County Borough Council
Section 75 of the Public Health Act 1961	Pleasure fairs and roller skating rinks	County Council County Borough Council
Section 76 of the Public Health Act 1961	Seaside pleasure boats	County Council County Borough Council
Section 77 of the Public Health Act 1961	Hairdressers and barbers	County Council County Borough Council
Section 19 of the Public Libraries and Museums Act 1964	Regulating the conduct of persons in libraries and museums and the use of those facilities	County Council County Borough Council
Section 35 of the Highways Act 1980	Regulation of walkways	County Council County Borough Council
Section 114 of the Highways Act 1980	Conduct of persons using or entering public conveniences provided by highway authorities	County Council County Borough Council
Section 14 of the Local Government (Miscellaneous Provisions) Act 1982	Acupuncture	County Council County Borough Council

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	Tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	County Council County Borough Council
Section 60 of the Food Act 1984	Regulation and prevention of nuisances in market places	County Council County Borough Council Community Council
Section 31 of the Road Traffic Regulation Act 1984	Use of a road as a playground for children	County Council County Borough Council
Section 57(7) of the Road Traffic Regulation Act 1984	Use of parking places	Community Council
Section 41 of the Clwyd County Council Act 1985	Leisure centres	County council and county borough council
Section 42 of the Clwyd County Council Act 1985	Temporary structures	County council and county borough council
Section 23 of the Housing Act 1985	Management, use and regulation of local authority houses, the use of land provided in connection with housing and as respects local authority lodging houses	County Council County Borough Council
Section 53 of the Swansea City Council (Tawe Barrage) Act 1986	Upstream river	County council (Swansea)
Section 31 of the Mid Glamorgan County Council Act 1987	Porthcawl Harbour	County borough council (Bridgend)
Section 14 of the West Glamorgan Act 1987	Leisure centres	County council and county borough council
Section 36 of the West Glamorgan Act 1987	Policing and control of pedestrian ways	County council and county borough council
Section 41 of the West Glamorgan Act 1987	Temporary structures	County council and county borough council
Section 63 of the West Glamorgan Act 1987	Swansea Market	County council (Swansea)
Section 45 of the Dyfed Act 1987	Temporary structures	County council and county borough council
Section 16 of the Cardiff Bay Barrage Act 1993	Good rule and government of inland bay and harbour	County Council (Cardiff)

<b>Enactment under which byelaws are made</b>	<b>Subject- matter of byelaws</b>	<b>Type of authority by whom the byelaws are made</b>
Section 2 of this Act	Good rule and government and the prevention and suppression of nuisances	County Council County Borough Council
Section 4(1) of this Act in so far as it applies to byelaws made under any of the enactments listed in Part 1 of Schedule 1	Power to revoke byelaws	Legislating Authority

Please note that the Welsh Ministers have the power to amend Part 1 and 2 of Schedule 1 so authorities should ensure that they always consult an up to date version of the 2012 Act.

## Byelaw-making procedures flowchart

		<b><u>Not requiring confirmation Procedure (Section 6)</u></b>		<b><u>Confirmation Procedure (Section 7 + 8)</u></b>
Stage 1 Consultation		Publication <sup>(1)</sup> of initial written statement of issue	S.7(3)	Publication <sup>(1)</sup> of initial written statement of issue
	S. 6(2)	Local consultation	-	Local consultation
Stage 2 Decision	S. 6(3)	Decision on whether to proceed with byelaw	S.7(4)-	Decision on whether to proceed with byelaw
	S. 6(4)	Publication <sup>(1)</sup> of second written statement: <ul style="list-style-type: none"> <li>• Summary of consultation</li> <li>• Decision and reasons</li> </ul>	S.7(5)	Publication <sup>(1)</sup> of second written statement: <ul style="list-style-type: none"> <li>• Summary of consultation</li> <li>• Decision and reasons</li> </ul>
Stage 3 byelaw made	S.6(5)	At least 6 weeks before making byelaws <ul style="list-style-type: none"> <li>• Publish<sup>(2)</sup> notice and byelaw</li> <li>• Deposit for inspection</li> </ul>		
	S. 6(8)	Authority makes byelaw (within 6 months)	S. 7(7) & 7(8)	At least 6 weeks before submitting for confirmation: <ul style="list-style-type: none"> <li>• Publish<sup>(2)</sup> notice and byelaw</li> <li>• Deposit for inspection</li> </ul>
Stage 4 Confirmation			S. 7(10))	Submitted to Welsh Ministers for confirmation
Stage 5 Commencement			S. 8(4)	Commencement on date fixed by Welsh Ministers, or 1 month from date byelaw was confirmed

## Notes:

1. Publication on the authority's website.
2. Publication of notice in local newspaper and on website; byelaw on website

## Fixed Penalty Notice Training Providers

The following organisations offer training courses in FPNs.  
Please be aware that they are independent training providers and are not approved or accredited by the Welsh Government.

Keep Britain Tidy  
Elizabeth House  
The Pier  
Wigan  
WN3 4EX

Telephone: 01942 612655  
Fax: 01942 824778  
Email: [training@keepbritaintidy.org](mailto:training@keepbritaintidy.org).

Chartered Institute of Environmental Health in Wales  
Lakeside Court  
Llantarnam Park  
Cwmbran  
NP44 3GA

Telephone: 01633 865533  
Fax: 01633 485193  
Email: [wales@cieh.org](mailto:wales@cieh.org)

Daniel Training Services Ltd.  
5 Springhill Drive  
Crofton  
Wakefield  
WF4 1EX

Tel: 01924 285446 or 07931 732266  
Fax: 01924 862737  
Email: [danieltraining@hotmail.co.uk](mailto:danieltraining@hotmail.co.uk)

Ellis Ford Associates,  
Magdale House,  
Netherton,  
Huddersfield  
HD4 7DL.  
Telephone: 01484 665568  
e-mail: [enquiries@ellisford.com](mailto:enquiries@ellisford.com)

**Bond Solon Training Ltd,  
6-14 Underwood Street,  
London  
N1 7JQ**

Tel: 0207 549 2549 ☐  
Fax: 0207 549 2505  
Email: [info@bondsolon.com](mailto:info@bondsolon.com)

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