

LOCAL GOVERNMENT BYELAWS (WALES) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Local Government Byelaws (Wales) Act 2012 which was passed by the National Assembly for Wales on 3 July 2012 and received Royal Assent on 29 November 2012. They have been prepared by the Department for Local Government and Public Services of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

COMMENTARY ON SECTIONS

Section 1 – Overview

2. **Section 1** provides an overview of the key provisions of the Act and what the Act seeks to achieve. The Act has 23 sections and 2 schedules.

Section 2 – Byelaws for good rule and government and suppression of nuisances

3. **Section 2** consolidates the provision of section 235 of the Local Government Act 1972 (“the 1972 Act”) into the Act. This enables county borough councils and county councils in Wales to make byelaws for the good rule and government of their areas and for the prevention and suppression of nuisances in their areas. Byelaws cannot be made under this section if provision for the purpose in question is made, or could be made, under another enactment. Byelaws under this power can, for example, prohibit skateboarding, ball games or touting in certain places where it causes a particular danger or nuisance, or can seek to regulate the manner in which those activities can be conducted.

Section 3 – Meaning of “legislating authority”

4. **Section 3** defines the meaning of “legislating authority” in Wales for the purpose of the Act. The definition includes county councils, county borough councils, community councils (which includes town councils), national Park Authorities and the Countryside Council for Wales who have the power to make byelaws.

Section 4 – Revocation by a legislating authority

5. **Section 4** recasts, in part, section 236B of the 1972 Act. It provides a power for a legislating authority to make a byelaw revoking a byelaw it has previously made where, there exists no other power to do so. This will allow legislating authorities to remove obsolete byelaw provisions. A legislating authority will be able to replace an obsolete byelaw (which it revokes pursuant to its powers under section 4) with a new byelaw.
6. Where a legislating authority makes a byelaw in exercise of its powers pursuant to this section, the byelaw does not require confirmation where the enactment under which the original byelaws was made is listed in Part 1 of Schedule 1 to the Act. However where

the original byelaw was made under an enactment not listed in Part 1 of Schedule 1, then the procedure in section 7 will apply to the revocation of the byelaws and confirmation will be required.

Section 5– Revocation by the Welsh Ministers

7. **Section 5** 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. The intention behind this provision is that the power of the Welsh Ministers will only be used where the power to revoke the byelaw, or the identity of the authority which should otherwise revoke the byelaw, is unclear. 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. This will ensure that all interested parties have the opportunity to inform the Welsh Ministers decision on whether an obsolete byelaw should be revoked. By virtue of section 21, such an order is subject to the National Assembly for Wales negative resolution procedure as the order making power merely enables Ministers to revoke byelaws that are no longer relevant.

Section 6 – Byelaws not requiring confirmation

8. **Section 6** prescribes the alternative procedure for a legislating authority to make a byelaw which will not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority pursuant to any of the enactments specified in Part 1 of Schedule 1 to the Act.
9. This section also specifies that a byelaw made by a legislating authority to amend or revoke an existing byelaw made under an enactment listed in Part 1 of Schedule 1 to the Act is subject to the provisions of section 6 of the Act and as a consequence does not require confirmation by the Welsh Ministers.
10. There are three stages to the procedure:
 - Initial written statement and consultation with interested persons;
 - Publication of decision and draft byelaws, as appropriate; and
 - Making and the coming into effect of byelaws.
11. Before making byelaws, a legislating authority must produce and publish an initial written statement which describes the issue which the legislating authority thinks may be addressed by making byelaws. The legislating authority must consult persons (including a community council where applicable) likely to be interested in, or affected by, the issue and, following consultation, to decide whether making byelaws is the most appropriate way forward. It is intended that guidance will emphasise that a legislating authority should keep an open mind as to whether a byelaw is the most appropriate way forward, prior to consultation.
12. The legislating authority must then publish a second written statement which contains the initial written statement, a summary of consultation responses, details of the decision reached following the conclusion of the consultation exercise and the rationale for that decision.
13. Where a legislating authority decides to make byelaws, it must give notice of its intention at least 6 weeks before the byelaws are made in one or more local newspapers circulating in the area to which the byelaws apply. The legislating authority must also publish this notice by placing it on the legislating authority's website, if a website is available. The legislating authority must also for at least 6 weeks prior to making byelaws publish the draft byelaws on the website of the legislating authority, place a copy on deposit at a place in the area of the legislating authority and ensure that a copy is open to public inspection at all reasonable hours without payment. The legislating

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authority, where applicable, must also ensure that a copy of the byelaw is sent to all community councils whose areas the legislating authority thinks are likely to be affected by the byelaw. The byelaw must be made no later than 6 months after the date on which the legislating authority gave notice of its intention to do so.

14. The legislating authority is required to publish the initial written statement, second written statement, notice of intention to make the byelaw and the draft byelaw on its website (if it has one).
15. A legislating authority may charge a reasonable fee for providing a copy of draft byelaws to any person.

Section 7 – Byelaws requiring confirmation

16. **Section 7** replaces and modifies provisions in section 236 of the 1972 Act. It relates to those byelaws made by a legislating authority pursuant to any enactment which confers on the legislating authority powers to make byelaws where specific provision as to the procedure is not otherwise made. The section 236 procedure detailed in the 1972 Act is the common procedure for the making of byelaws which require confirmation.
17. This section also clarifies that a byelaw made by a legislating authority to amend or revoke an existing byelaw made under an enactment not listed in Part 1 of Schedule 1 to the Act is subject to the provision of section 7 of the Act and, as a consequence, requires confirmation by the Welsh Ministers.
18. There are three stages to the procedure:
 - Initial written statement and consultation with interested persons;
 - Publication of the decision and the proposed byelaw(s), as appropriate; and
 - Making, confirming and the coming into effect of the byelaw(s).
19. Before making byelaws, a legislating authority must produce and publish an initial written statement which describes the issue which the legislating authority considers may be addressed by making byelaws. The legislating authority must consult persons (including a community council where applicable) likely to be interested in, or affected by, the issue and, following consultation, to decide whether making byelaws is the most appropriate way forward. It is intended that guidance will emphasise that a legislating authority should keep an open mind as to whether a byelaw is the most appropriate way forward, prior to consultation.
20. The legislating authority must then publish a second written statement which contains the initial written statement, a summary of consultation responses, details of the decision reached following the conclusion of the consultation exercise and the rationale for that decision.
21. At least 6 weeks before the byelaw is submitted for confirmation, the legislating authority must publish notice of its intention to do so in one or more local newspapers circulating in the area to which the byelaws apply. The legislating authority must also publish this notice by placing it on the legislating authority's website, if a website is available.
22. The legislating authority must also for at least 6 weeks prior to submitting the byelaw for confirmation publish the proposed byelaws on the legislating authorities website, place a copy on deposit at a place in the legislating authorities area and ensure that a copy is open to public inspection at all reasonable hours without payment.
23. The legislating authority, where applicable, must also ensure that a copy of the byelaw is sent to all community councils whose areas the legislating authority thinks are likely to be affected by the byelaw.

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24. The legislating authority must provide a copy of the byelaw to any person who applies subject to payment of a reasonable fee.
25. The confirming authority may refuse to confirm any byelaw submitted for confirmation. Byelaws do not have effect unless and until they are confirmed by the confirming authority.
26. Where no confirming authority is specified in the enactment under which the byelaws are made the confirmation function of the Welsh Ministers is exercisable concurrently with the Secretary of State. The retention of the concurrent confirmation function will enable the Secretary of State to consider any byelaws made under enabling legislation yet to be identified where it is agreed that it is appropriate for the relevant Secretary of State to confirm such byelaws.

Section 8 – Formalities, commencement and publication of byelaws

27. **Section 8** recasts the provisions in section 236 of the 1972 Act which will apply to both byelaws made subject to the confirmation procedure and byelaws made subject to the alternative procedure which do not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority under any enactment which confers on the legislating authority the power to make byelaws. It should be noted that the procedures described in the section only apply to the extent that specific provision as to the procedure is not otherwise made.
28. Byelaws are to be made under the common seal of the legislating authority, or signed by two members of a community council not having a seal.
29. Byelaws are to come into effect on the date fixed by the legislating authority or the confirming authority as appropriate to the procedure under which the byelaws are made. Where no date is fixed, byelaws will come into effect one month from having been made (under the section 6 procedure) or one month from confirmation (under the section 7 procedure), as appropriate.
30. The legislating authority which makes the byelaws must publish the byelaws on its website and deposit a copy at a place in the area of the legislating authority for public inspection. A legislating authority may charge a reasonable fee for providing a copy of the byelaws to any person.
31. The proper officer of a legislating authority must send a copy of the byelaws made by the legislating authority to the proper officer of the council of every community to which the byelaws apply. For a National Park authority, the proper officer must send a copy of every byelaw once made, or where required once confirmed, to the proper officer of the council for every county borough or county or community in Wales whose area includes the whole or part of the National Park.
32. The proper officer of the community council must deposit the byelaws with the public documents of the community and ensure that a copy is open to public inspection.
33. The Countryside Council for Wales must ensure that a copy of a byelaw once made, or where required once confirmed, is sent to the proper officer of the council of every county borough or county to whose area the byelaws applies and to the proper officer of the council of every community to whose area the byelaw applies.
34. This section provides that the “proper officer” is the officer duly authorised to serve that purpose by that body.

Section 9 – Power to amend Part 1 of Schedule 1

35. **Section 9** provides a power for the Welsh Ministers, by order, to amend Part 1 of Schedule 1 (byelaws not requiring confirmation) to the Act. In making any such order the Welsh Ministers may 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. By virtue of section 21(4), such an order is subject to affirmative resolution by the National Assembly for Wales as the order will amend this Act and may include consequential amendments to other primary legislation in accordance with the power in section 21(1).

36. Provisions in section 21(1) allow the Welsh Ministers to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider to be appropriate. In the case of an order under section 9, this can include provision amending, repealing or revoking enactments.

Section 10 – Offences against byelaws

37. **Section 10** recasts section 237 of the 1972 Act, including the modifications made regarding the fine payable provided by the Criminal Justice Act 1982. Byelaws made by a legislating authority may provide that persons contravening such byelaws are liable on summary conviction to a fine. 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). 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.

Section 11 – Section 2 byelaws; powers of seizure etc

38. **Section 11** replicates section 237ZA of the 1972 Act, inserted by section 150(2) of the Police Reform and Social Responsibility Act 2011. It enables a county council or county borough council to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under section 2 (good rule and government and for the prevention and suppression of nuisances) and, upon conviction for non-compliance or contravention of any byelaw, provision for forfeiture of any such property.

Section 12 – Power to offer fixed penalties for offences against certain byelaws

39. **Section 12** enables a legislating 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 Act.
40. Where a byelaw is specified within Part 2 of Schedule 1 to the Act, subsection (2) provides for an authorised officer of a legislating authority to issue a fixed penalty notice offering a person the opportunity of discharging liability for conviction for a byelaw offence by the payment of the amount specified in the fixed penalty notice. Subsection (3) makes the same provision for an authorised officer of a community council to issue fixed penalty notices 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.
41. Subsection (4) provides that a fixed penalty is payable to the legislating authority whose officer issued the notice.
42. Subsection (5) provides that, following receipt of a fixed penalty notice, the recipient has fourteen days in which to pay the specified fine, and thus avoid attending the Magistrates' Court in respect of the offence.
43. Subsection (6) provides that the fixed penalty notice must give sufficient information to the recipient so that the nature of the offence is clear.
44. Subsection (7) provides that a fixed penalty notice 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.
45. Subsection (8) provides for the method of payment of the fixed penalty by way of pre-paying and posting a letter.

46. 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.
47. Subsection (10) provides the Welsh Ministers with a regulation making power to specify the form of the fixed penalty notice issued pursuant to this section. These powers are subject to the National Assembly for Wales negative resolution procedure.
48. 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 having been received, or not, as the case may be will be deemed evidence of the facts stated.
49. Subsection (12) makes provision about which persons are authorised to issue fixed penalty notices. “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.
50. Welsh Ministers are empowered to specify, by regulations, the form of such a notice and the conditions to be satisfied by a person before a community council may authorise them for the purpose of giving notices. This power is subject to the National Assembly for Wales negative resolution procedure.

Section 13 – Amount of fixed penalty

51. **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 a range within which the amount of fixed penalty must fall. The exercise of this power is subject to the National Assembly for Wales negative resolution procedure.
52. Where a range has been specified, a legislating authority may choose to set an amount within that range. Where no range has been set, a legislating authority will have the freedom to set the penalty. 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 Ministers to make an order to change the default amount as necessary, so that the level remains in line with similar low-level offences. The Welsh Ministers’ powers in this regard are subject to affirmative resolution by the National Assembly for Wales.

Section 14 – Power to require name and address in connection with fixed penalty

53. **Section 14** gives an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom the notice is issued to give their name and address. A person who fails without reasonable excuse to give their name and address, or gives a false name and address, will commit an offence and is liable on summary conviction to fine not exceeding level three on the standard scale (currently £1,000). The offence of failing to co-operate undermines the ability of a legislating authority to enforce the law and this offence is reflected in the level of the fine.

Section 15 – Use of fixed penalty receipts

54. **Section 15** requires a legislating authority, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money in combating nuisances for the prevention of which any byelaw has been made. This means that legislating authorities are required to consider whether fixed penalty receipts should be used generally in combating such nuisances. It would not be necessary for receipts to be used only towards combating the nuisance the relevant byelaw is concerned with.

Section 16 – Power to amend Part 2 of Schedule 1

55. **Section 16** provides that the Welsh Ministers may by order amend the list detailed at Part 2 of Schedule 1 to the Act (byelaws in relation to which fixed penalties may be issued) by adding to or subtracting from the list of enactments or by amending the type of the authority that may offer fixed penalty notices. This order making power is subject to the National Assembly for Wales affirmative resolution procedure.

Section 17 – Community Support Officers etc

56. **Section 17** amends the Police Reform Act 2002 so that if a legislating authority and the chief police officer for the area agree, community support officers and other “accredited persons” under that Act may issue fixed penalty notices for breach of legislating authority byelaws. Before a community support officer or accredited person will be able to do this, the chief police officer is required to designate the community support officer or accredited person as having that function. In addition, the byelaw to which the fixed penalty notice relates is required to appear on a list agreed between the chief police officer and the legislating authority.

Section 18 – Guidance

57. **Section 18** gives the Welsh Ministers the power to issue statutory guidance in relation to the procedures for the making of byelaws to which section 6 and section 7 applies, the enforcement of byelaws and anything related to these matters. Such related matters will include guidance on consulting on and publicising new byelaws, good practice in relation to byelaws and the use of fixed penalty notices. The legislating authority must have regard to the guidance issued when making or enforcing byelaws.

Section 19 – Evidence of byelaws

58. **Section 19** recasts section 238 of the 1972 Act. It makes provision for evidencing the existence of byelaws made by a legislating authority for byelaws made that are not subject to the confirmation procedure. A certified copy of a byelaw is deemed to be a printed copy of the byelaw that was made which is endorsed together with a certificate signed by the proper officer of a legislating authority.
59. The certified copy byelaw must state that the byelaw was made by the legislating authority, that it is a true copy of the made byelaw, the date upon which the byelaw was confirmed by the legislating authority named in the certificate, or not, as the case may be, and if sent to the confirming authority was not disallowed. In addition, the certified copy must state the date, if any, fixed by the confirming authority for the coming into effect of the byelaw.
60. This section provides that the production of a certified copy byelaw is deemed sufficient evidence of the facts stated in the certificate, unless otherwise proved.
61. A legislating authority would not be required to state within the certified copy the requirements detailed at subsection 19(2)(c) and (d) if the byelaw was not subject to confirmation after it was made.

Section 20 – Consequential amendments

62. **Section 20** gives effect to Schedule 2 to the Act which makes minor and consequential amendments to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act. Where byelaws are to be subject to the alternative procedure detailed in the list at Part 1 of Schedule 1 to the Act, any requirement for confirmation is to only apply in England.
63. Amendments are made which place on a legislating authority the duties that were formerly exercised by the Welsh Ministers acting as the confirming authority.

64. Amendments are also made to sections 235, 236, 236B and section 238 of the 1972 Act to disapply these provisions in relation to Wales.

Section 21 – Orders and regulations

65. **Section 21** provides for a power to make regulations and orders under the Act to include power to make incidental, consequential, transitional or supplemental provision.
66. In the case of the powers to make orders under sections 9 and 16 (amendment of Parts 1 and 2 of Schedule 1) the incidental, consequential, transitional or supplemental provision which may be made can include provision amending, repealing or revoking enactments.
67. Orders under sections 9 and 16, and any order under section 13(5), are made subject to the National Assembly for Wales affirmative procedure as they seek to amend this Act and may make subsequent amendments to other primary legislation.
68. Other orders and regulations (apart from commencement orders) are subject to the negative procedure.

Section 22 – Commencement

69. **Section 22** provides for section 18(1), 21, 22 and 23 to come into force on the day after the day on which the Act is approved by Her Majesty in Council. The other provisions of the Act will come into force in accordance with provision made by the Welsh Ministers by order.

Section 23 – Short title

70. **Section 23** provides that the short title of this Act is the Local Government Byelaws (Wales) Act 2012.

Schedule 1

71. **Part 1** of Schedule 1 lists the enactments under which byelaws are made which are not subject to confirmation by the Welsh Ministers. It is provided that section 6 of the Act will apply to byelaws made under the enactments and type of legislating authority listed in Part 1 of Schedule 1.
72. **Part 2** of Schedule 1 lists the enactments under which byelaws are made which may be discharged by fixed penalty notice. It is provided that section 12 of the Act will apply to byelaws made under the enactments and type of legislating authority listed in Part 2 of Schedule 1.

Schedule 2

73. **Schedule 2** lists the minor and consequential amendments made by the Act to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

74. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IID=2413>

<i>Stage</i>	<i>Date</i>
Introduced	28 November 2011

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<i>Stage</i>	<i>Date</i>
Stage 1 Consideration of General Principles – Plenary Debate	24 April 2012
Stage 2 Detailed consideration by Committee – consideration of amendments	17 May 2012
Stage 3 Detailed consideration by the Assembly - consideration of amendments	3 July 2012
Stage 4 Final Stage	3 July 2012
Royal Assent	29 November 2012