

**WELSH GOVERNMENT
LOCAL GOVERNMENT BYELAWS (WALES) ACT 2012
GUIDANCE FOR MODEL BYELAWS SET 2:
PLEASURE GROUNDS, PUBLIC WALKS AND OPEN SPACES**

Introduction

1. A byelaw is a local law which is made by a statutory body, such as a Council for a county or county borough in Wales, under an enabling power in an Act of Parliament or an Act of the National Assembly for Wales.
2. Model byelaws act as a template for Councils when drafting byelaws and set out appropriate wording for byelaws on a number of different subjects. However, the models should not be adopted en bloc, but as genuinely required to address an existing problem. Councils should note that some of the individual model byelaws and/or their provisions are optional and only those which are needed and appropriate should be adopted.
3. Once a Council has established that the problem to be addressed is covered by a particular model byelaw, the Council should locate a copy of it from the Welsh Government website and adapt it according to their needs. The accompanying guidance notes will assist in the drafting process. Councils should also follow the relevant procedure as set out in the Local Government Byelaws (Wales) Act 2012.
4. It is recommended that Councils follow the model byelaws in order to reduce the risk of drafting problems or avoid the implementation of byelaws which are not fit for purpose. It should be noted that the model byelaws are not compulsory and may be added to or amended in the light of experience, demand and changing circumstances. There are, however, some cases in which certain byelaws should be adopted in their entirety.
5. The following guidance note should be read alongside the model byelaws and the *'Local Government Byelaws (Wales) Act 2012 Guidance, including Statutory Guidance, to Welsh Local Authorities, Community and Town Councils, National Park Authorities and Natural Resources Wales'*, issued by the Welsh Government. This can be found on the Welsh Government website at the following link:
<http://gov.wales/topics/localgovernment/local-government-byelaws/?lang=en>
6. This guidance note is specifically designed to support the use of those byelaws relating to pleasure grounds, public walks and open spaces, made under section 164 of the Public Health Act 1875, section 15 of the Open Spaces Act 1906 and sections 12 and 15 of the Open Spaces Act 1906.

Further information/contact points

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

Local Government Partnerships Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
E-mail ethicsandregulation@wales.gsi.gov.uk

The Enabling Power

8. Section 164 of the Public Health Act 1875 and section 15 of the Open Spaces Act 1906 enable local authorities to make byelaws for the regulation of public walks and pleasure grounds and for open spaces and burial grounds respectively. Section 12 of the Open Spaces Act 1906 extends the types of land for which byelaws can be made under section 15 of that Act.
9. Which enabling powers are appropriate will depend on the statutory authority from which the Council's interest in the land is derived and whether or not the Council is involved in the management of the land.
10. If the Council cannot establish under what statute it holds a ground, it should act as though it held it under a statute without a specific byelaw-making power. **Flowchart 1** annexed to this guidance note, may assist in identifying the correct byelaw-making power for each ground the Council wishes to regulate. Flowchart 1 applies to open land that is used as a pleasure ground. The Open Spaces Act 1906 is not, however, relevant when more than 5% of the area is covered by buildings (section 20 of that Act).
11. Where there is a joint interest in any ground, it is advisable to seek the permission of all the interested parties before the byelaws are made. Grounds in which the Charity Commissioners have an interest can only be regulated with their agreement. Similarly, the agreement of the diocesan authorities, the incumbent, and the parochial church council should be sought where there are proposals to regulate burial grounds or churchyards. As it will normally not be appropriate or possible to regulate churchyards under section 164 of the Public Health Act 1875, Councils should study carefully all of the relevant provisions of the Open Spaces Act 1906 (particularly sections 6, 11,12, 15 and 20) before making byelaws. If a Council has not acquired "any estate, interest or control" under the Open Spaces Act 1906, it might be possible to make byelaws under section 2 of the Local Government Byelaws (Wales) Act 2012, but again, only with the written permission of the church authorities.
12. **Flowchart 2** also annexed to this guidance note should be used to help Councils identify the correct byelaw-making power for any common land or town or village green they wish to regulate. The Flowchart also applies to common land and town or village greens, whether or not they are registered as such under the Commons Registration Act 1965. **Please note that Flowcharts 1 and 2 do not provide a definitive statement of the law but are offered as guides only.**

Consultation

13. Byelaws made under section 164 of the Public Health Act 1875, section 15 of the Open Spaces Act 1906 and section 12 and 15 of the Open Spaces Act 1906 do not require confirmation by the Welsh Ministers under the Local Government Byelaws (Wales) Act 2012. The procedure for making such byelaws is set out in section 6 of that Act, which also imposes a duty to consult any person (including, where applicable, a community council) who the authority thinks is likely to be interested in, or affected by, the issue.

Use of the Model Byelaws

Instructions and layout

14. Words highlighted in italics in the model byelaws give instructions on how to adapt the model (e.g. “*insert name*”) or provide a more detailed description of what is covered by the model byelaw where a number of model byelaws relate to the same subject matter.
15. Generally, square brackets are used to indicate:
 - (1) additional wording, which it may be appropriate to use in some cases (e.g. “[Outside the designated areas]”);
 - (2) a choice of wording; or
 - (3) numbers which it is likely will need to be updated when editing the model byelaw set (e.g. Schedule [1])
16. If the byelaws are to include schedules or maps, these should appear before the Council’s seal.

General interpretation provisions

17. The general interpretation provision should be used to define terms which are used several times in the text of the byelaws. Councils should only use the definition in the list which appears in the text of the model byelaws that the Council has selected.
18. Where a defined word only appears in the text of one of the byelaws which a Council proposes to adopt, that definition should be included within the text of the relevant byelaw, preferably as a separate sub-paragraph.
19. Where the byelaws are to be broken down into Parts dealing with different topics, it may also be appropriate to include in the relevant Part, an interpretation byelaw to define terms used several times in that Part only (e.g. model byelaw 15 in Part 3).

Application and Schedules

20. Councils should adopt either model byelaw 2 or 3. When defining the application of the byelaw, model byelaw 2 should be adopted where the byelaws will apply to only one ground or where the byelaws will apply uniformly to several grounds. Model byelaw 3 should be used in all other cases.

21. Where model byelaw 3 is adopted, grounds to which any byelaw applies specifically should be indicated, either in the relevant byelaw or in Part 1 of Schedule 2. For example, model byelaw 4 (opening hours), which should only be used in the circumstances set out in paragraph 26 below, might apply to some but not all of the grounds to which the byelaws apply generally.
22. Where a schedule is used to list the grounds to which the byelaws will apply, the list should be shown alphabetical by name or by brief description of location under an alphabetical list of the towns or districts in which the grounds are located.

Description of grounds and references to geographical locations

23. Precise descriptions of the grounds are important: names of grounds should be used, or, if these are ambiguous, the Council should refer to street names or physical landmarks. References to local authority boundaries or OS map references should only be used in addition to any descriptions.
24. Any map or plan that is referred to in the byelaws should be:
 - (1) in black and white; of a suitable size for inclusion in the byelaws; and
 - (2) should precede the Council's seal.

Designated areas and routes

25. A number of model byelaws refer to a "designated area" or a "designated route". These terms refer to an area or route which the Council has set aside for a particular purpose. Any such area or route and its purpose must be indicated in the ground concerned by means of clearly displayed signs.

Opening times

26. For reasons of enforceability, model byelaw 4 should be adopted only if the ground is enclosed on all sides and can be secured with lockable gates.

Climbing

27. Byelaws should not be used to protect people from the consequences of their own actions. For this reason, model byelaw 7, which is concerned with climbing, should only be used to prevent a nuisance from being caused to others.

Protection of wildlife

28. Model byelaw 9 applies to the hunting, shooting or trapping of animals. If the ground includes a river or other waterway and the purpose of the byelaw is to protect wildlife in the waterway, model byelaw 43 (fishing) should be adopted. Wild birds and their nests and eggs are protected by section 1 of the Wildlife and Countryside Act 1981 and therefore are not provided for in the byelaw.

Fires

29. The words in square brackets need only be adopted if camping or barbecues or both are to be permitted in an area of the grounds.

Missiles

30. Section 2 of the Public Order Act 1986 provides that where three or more persons who are present together and use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder. This section provides for circumstances involving three or more persons. As such, byelaw 13 should only be used in instances where there is less than three people throwing a missile.

Horses

31. The Council must be satisfied that this byelaw is reasonable and does not discriminate unfairly against one section of the community. A ban on horse-riding in smaller grounds would be reasonable but not justified in grounds of 4 hectares (10 acres) or more.
32. Where a Council wishes to make a byelaw to restrict or ban horse-riding in a particular ground, it should first consider what other facilities exist in the area for riding and also consult any local riding schools and, as far as possible, individual horse riders by e.g. placing notices at the entry to the ground or newspaper advertisements.

Vehicles

33. Section 34(1) of the Road Traffic Act 1988 (prohibition of driving mechanically propelled vehicles elsewhere than on roads) provides that if without lawful authority a person drives a mechanically propelled vehicle: (a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or (b) on any road being a footpath, bridleway or restricted byway, he is guilty of an offence. However, it is not an offence under section 34 to drive a mechanically propelled vehicle on any land within 15 yards of a road upon which vehicles may lawfully be driven for the purposes of parking on that land. Councils should rely upon the Road Traffic Act 1988 to prohibit the riding or driving of mechanically propelled vehicles in pleasure grounds and open spaces, and only adopt model byelaw 21 if it is intended to permit use of vehicles or certain classes of vehicles in some areas of the ground.
34. Model Byelaw 21 includes words in square brackets which may be adopted if the Council has, for example, set aside a route through a large ground for motorcycles. Where this is the case, Model Byelaw 21(2) also enables persons wishing to make use of the designated route to transport their motorcycle through the ground to reach the route. This may need to be adapted to the circumstances of the ground in question, and will be unnecessary where it is possible to enter and exit the ground while remaining on the designated route.

Ball-games

35. It will usually only be appropriate to ban ball-games in a very small ground or an ornamental garden. Where the playing of ball-games is to be banned or severely restricted there should be other grounds in the locality where ball-game restrictions do not apply.
36. Where a designated area for playing ball-games is set aside and model byelaw 31 is adopted, the byelaw will not be breached unless a person breaking the rules set out in Schedule 3 (and displayed in the area) has been asked to desist from the prohibited behaviour. Only if that person ignores this request will they become liable to removal from the park and to prosecution. This proviso is important because model byelaw 31 could otherwise catch very trivial incidents.

Model aircraft

37. When adopting any of these model byelaws Councils should take account of the provisions of the Code of Practice on Noise from Model Aircraft, approved on 1st February 1982, which is obtainable from Her Majesty's Stationery Office and through booksellers. They should also consult the Safety Code of the British Model Flying Association for guidance on what types of model might be flown in particular grounds. Before making and advertising the byelaws the Council should bring their proposals to the notice of the British Model Flying Association, Chacksfield House, 31 St Andrew's Road, Leicester, LE2 8RE (website address: www.bmfa.org; telephone number 0116 2440028) and of any local model aircraft clubs and should consider their views.
38. Byelaws concerning model aircrafts are designed to regulate noise nuisance caused by aircrafts; and / or any public safety concerns caused by the use of larger and more powerful model aircrafts. The basic wording in the definition of "power-driven" in model byelaw 45 addresses aircrafts which create noise nuisance. If there is also a genuine public safety concern, the words in square brackets also bring quieter model aircrafts within the definition.

Aircraft, hang gliders and hot air balloons

39. In instances where a byelaw is required to regulate the taking off or landing of aircrafts, hang gliders and hot air balloons on the seashore, councils must contact the [Transport Policy, Planning & Partnerships](#) Department to ensure that the land, which is due to be protected by the byelaw, is not classified as an urban area. Where land is defined as an urban area, the Rules of the Air Regulations 2007 should be used.

Metal detectors

40. Councils may introduce byelaws to prohibit or restrict the use of metal detectors in pleasure grounds. Byelaws to prohibit the use of metal detectors may be appropriate in grounds requiring special protection, for example areas consisting of closely mown and carefully cultivated turf and flower beds or sites of archaeological botanical or scientific interest or areas much used by blind or disabled persons. However, a byelaw which prohibits the use of metal detectors in areas not in need of special protection or from all

the grounds in a particular area may be seen as over-restrictive and unreasonable. The model byelaw can be adapted to provide for partial bans as necessary.

41. Where a Council wishes to introduce a byelaw to restrict or prohibit the use of metal detectors in any ground, we consider that it should first consult any local metal detector clubs or a national body representing metal detector users, such as the National Council for Metal Detecting, 51 Hilltop Gardens, Denaby, Doncaster, DN12 4SA (website address: www.ncmd.co.uk, telephone number: 01709 868521; e-mail: trevor.austin@ncmd.co.uk). CADW, Plas Carew, Unit 5/7 Cefn Coed Parc, Nantgarw, Rhondda Cynon Taf, CF15 7QQ; tel 01443 33 6000; email CADW@wales.gsi.gov.uk should also be consulted.

Removal of offenders

42. It should be noted that the term "officer of the Council" will not extend to an employee of a private security firm, even where authorised to act by the Council.

Revocation

43. The text of this model byelaw, which can be used to revoke existing byelaws, contains a number of instructions which may require further elaboration:

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

44. Byelaws made under section 8(1)(d) of the Local Government Act 1894 can only be revoked by an order made by the Welsh Ministers: please contact the Local Government Partnerships Division at the Welsh Government for further information.