

**WELSH GOVERNMENT
LOCAL GOVERNMENT BYELAWS (WALES) ACT 2012
GUIDANCE FOR MODEL BYELAWS SET 5:
PROMENADES**

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 and 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 to 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 '*Local Government Byelaws (Wales) Act 2012 Guidance, including Statutory Guidance, to Welsh Local Authorities, Community and Town Councils, National Park Authorities and Natural Resources Wales*', issued by the Welsh Government. This can be found on the Welsh Government website at:
<http://gov.wales/topics/localgovernment/local-government-byelaws/?lang=en> :
6. This guidance note is specifically designed to support the use of the Welsh Government's model byelaws relating to promenades, made under section 83 of the Public Health Acts Amendment Act 1907.

Further information/contact points

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

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

The Enabling Power

8. Section 83 of the Public Health Acts Amendment Act 1907 enables local authorities to make byelaws to regulate the user of any promenade within its district and to provide for the preservation of order and good conduct for the purpose of preventing danger, obstruction or annoyance to persons using the promenade. A community or town council who consider that promenade byelaws are needed for its area might wish to contact the county or county borough council with their proposal, although any decision to make the byelaws would be at the county or county borough Council's discretion.
9. Byelaws made under section 83 of the Public Health Acts Amendment Act 1907 do not require confirmation by the Welsh Ministers under the Local Government Byelaws (Wales) Act 2012. The procedure for making such byelaws is set out in section 6 of that Act, which also imposes a duty to consult any person (including, where applicable, a community council) who the authority thinks is likely to be interested in, or affected by, the issue.

Use of the Model Byelaws

10. Words highlighted in italics give instructions on how to adapt the model (e.g. "*insert name*") or provide a more detailed description of what is covered by the byelaw where a number of model byelaws relate to the same subject matter.
11. 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])
12. If the byelaws are to include schedules or maps, these should appear before the Council's seal.

Interpretation provisions

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

Application and Schedule

14. Where the byelaws will apply to several promenades, they should be listed in alphabetical order in a Schedule to the byelaws. If the byelaws are to apply to a limited part of a promenade, the description of the area should refer to physical landmarks which the public will recognise, and references to local authority boundaries or OS map references should only be used in addition to any descriptions. Any map or plan that is referred to in the byelaws should be: in black and white; of a suitable size for inclusion in the byelaws; and should precede the Council's seal. Colour can be used for maps, but Councils should be aware that printed copies of the byelaws will have to be made available in colour.

Signs

15. Local authorities are required to place notices in conspicuous positions when this is specifically mentioned in a byelaw. Councils should also consider whether notices would be helpful to draw the attention of the public to other byelaws.

Fees and permits

16. Byelaws should not be used to compel any person to pay a fee to the Council or to introduce a licensing or permit scheme. A requirement that a fee should be paid or a permit obtained may, in view of the decision in *Moorman v Tordoff* (1908), 72 J.P. 142, render the byelaw *ultra vires* and unreasonable.
17. If the Council is the owner or lessee of the promenade, it may be entitled to make charges or require permits in respect of the user of the promenade (subject to any public rights). Any regulations making or requiring charges or permits must be entirely independent of the byelaws and must be drawn up to make it perfectly clear that non-compliance will not be a breach of any of the provisions of the byelaws.

Motor vehicles

18. 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 who drives a mechanically propelled vehicle - (a) on to or upon any common land or moorland or land of any other description, not being land forming part of a road, or (b) on any road being a footpath, bridleway or restricted byway, is guilty of an offence.

19. However, it is not an offence under section 34 of that Act to drive a mechanically propelled vehicle on any land within 15 yards of a road upon which vehicles may lawfully be driven for the purposes of parking on that land. Local authorities should rely upon the 1988 Act to prohibit the riding or driving of mechanically propelled vehicles on a promenade, and only adopt Model Byelaw 6 if it is intended to permit use of vehicles or certain classes of vehicles on some parts of the promenade.

Trading

20. This model byelaw deals with obstructions or nuisance caused by persistent trading or touting. More general controls on the sale of goods should be dealt with under street trading law. Although the enabling power in section 83 of the Public Health Acts Amendment Act 1907 refers specifically to the regulation of selling and hawking on a promenade, powers to control street trading under section 3 of and schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 are more comprehensive and should be used in preference. "Street" includes beach for the purposes of the 1982 Act, as defined in paragraph 1 of schedule 4 to the Act

Revocation

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

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