



# Local Government Byelaws (Wales) Act 2012

2012 anaw 2

## *Introduction*

### **1 Overview**

This Act –

- (a) reforms procedures for making byelaws in Wales, including removing a requirement for confirmation of byelaws by the Welsh Ministers;
- (b) enables certain byelaws to be enforced by fixed penalty notices;
- (c) requires authorities that make byelaws to have regard to any guidance given by the Welsh Ministers on procedure;
- (d) restates for Wales a general power to make byelaws.

## *Power to make byelaws*

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

- (1) A council for a county or county borough in Wales may 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) But byelaws may not make provision which –
  - (a) is made by an Act of Parliament, Assembly Measure or Act of the Assembly;
  - (b) is made, or could be made, by subordinate legislation (which means legislation made by statutory instrument).

### *Interpretation*

#### **3 Meaning of “legislating authority”**

Each of the following is a legislating authority for the purposes of this Act –

- (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.

### *Revocation of byelaws*

#### **4 Revocation by a legislating authority**

- (1) A legislating authority may make a byelaw to revoke a byelaw previously made by it.
- (2) But this power may be exercised only where the authority has no other power to revoke the byelaw.

#### **5 Revocation by the Welsh Ministers**

- (1) The Welsh Ministers may by order revoke any byelaw made by a legislating authority which they conclude is obsolete.
- (2) Before making an order, the Welsh Ministers must consult any person (including a community council) who they think is likely to be interested in, or affected by, the revocation of the byelaw.
- (3) An order may make different provision for different areas, including different provision for different localities and for different authorities.

### *Procedure for byelaws*

#### **6 Byelaws not requiring confirmation**

- (1) This section applies to byelaws made by a legislating authority under the enactments listed in Part 1 of Schedule 1, including byelaws which amend or revoke byelaws previously made by it.
- (2) Before it makes a byelaw, 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;
  - (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) Following the consultation, the authority must consider the responses and decide whether making a byelaw is the most appropriate way of addressing the issue.
- (4) 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;

- (c) its decision;
  - (d) the reasons for that decision.
- (5) At least six weeks before the byelaw is made, notice of the intention to make the byelaw must be published –
- (a) in one or more local newspapers circulating in the area to which the byelaw is to apply;
  - (b) on the authority’s website.
- (6) For at least six weeks before making the byelaw, the authority must ensure that –
- (a) a draft of the byelaw is published on the authority’s website;
  - (b) a copy of the draft is deposited at a place in the authority’s area;
  - (c) a copy is open to public inspection at all reasonable hours without payment;
  - (d) where applicable, a copy is sent to all community councils whose areas the authority thinks are likely to be affected by the byelaw.
- (7) The authority must give a copy of the draft byelaw to any person who applies for it, subject to that person paying such reasonable fee charged by the authority (if any).
- (8) An authority may not make a byelaw later than six months after the date of the notice under subsection (5).

## **7 Byelaws requiring confirmation**

- (1) This section applies to byelaws made by a legislating authority under any enactment other than those listed in Part 1 of Schedule 1, including byelaws which amend or revoke byelaws previously made by it.
- (2) But this section does not apply to the extent that the enactment conferring the power to make a 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 the byelaw;
  - (c) publication of the byelaw;
  - (d) making copies of the byelaw available.
- (3) Before it makes a byelaw to which this section applies, 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;
  - (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.
- (4) Following the consultation, the authority must consider the responses and decide whether making a byelaw is the most appropriate way of addressing the issue.
- (5) 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;
  - (c) its decision;
  - (d) the reasons for that decision.

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*Status: This is the original version (as it was originally enacted).*

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- (6) Byelaws made by the legislating authority must be submitted to the confirming authority and do not have effect unless and until they are confirmed by the confirming authority.
- (7) At least six weeks before the byelaw is submitted for confirmation, notice of the legislating authority's intention to do so must be published –
  - (a) in one or more local newspapers circulating in the area to which the byelaw is to apply;
  - (b) on the authority's website.
- (8) For at least six weeks before the byelaw is submitted for confirmation, the legislating authority must ensure that –
  - (a) the byelaw is published on the authority's website;
  - (b) a copy of the byelaw is deposited at a place in the authority's area (and, in the case of a byelaw made by the Countryside Council for Wales under the National Parks and Access to the Countryside Act 1949, at a place in the area of each council of a county or county borough to whose area the byelaw applies);
  - (c) where applicable, a copy is sent to all community councils whose area the authority thinks is likely to be affected by the byelaw;
  - (d) a copy is open to public inspection at all reasonable hours without payment.
- (9) The legislating authority must give a copy of the byelaw to any person who applies for it, subject to that person paying such reasonable fee charged by the authority (if any).
- (10) The confirming authority may confirm, or refuse to confirm, any byelaw submitted to it under this section.
- (11) For the purposes of this Act, the confirming authority is –
  - (a) the person specified in the enactment under which the byelaws are made as the person who is to confirm the byelaws, or
  - (b) if no person is specified, the Welsh Ministers.
- (12) The functions of the Welsh Ministers under subsection (11)(b) are exercisable concurrently with the Secretary of State.

## **8 Formalities, commencement and publication of byelaws**

- (1) This section applies to byelaws made by a legislating authority under any enactment.
- (2) But this section does not apply to the extent that the enactment conferring the power to make the byelaw makes different provision in relation to one or more of the following –
  - (a) signature or sealing of the byelaw;
  - (b) publication of the byelaw;
  - (c) making copies of the byelaw available.
- (3) Byelaws made by a legislating authority must be made under the common seal of the authority, or, in the case of byelaws made by a community council not having a seal, signed by two members of the council.
- (4) Byelaws come into effect on the date fixed by the legislating authority, or if they require confirmation, by the confirming authority. If no date is fixed, they come

into effect at the end of one month from the date they are made (or confirmed, as applicable).

- (5) The legislating authority which makes the byelaw must –
  - (a) publish the byelaw on the authority’s website when made, or if it requires confirmation, when confirmed;
  - (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, subject to that person paying such reasonable fee charged by the authority (if any).
- (6) The proper officer of a county borough council or county council must send a copy of a byelaw once made, or where required once confirmed, to the proper officer of the council of every community to which the byelaw applies.
- (7) 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 required once 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;
  - (b) the council of every community whose area includes the whole or part of the National Park.
- (8) In the case of byelaws made by the Countryside Council for Wales under the National Parks and Access to the Countryside Act 1949, the Council must ensure that it sends a copy of a byelaw once made, or where required once confirmed, to the proper officer of –
  - (a) the council of every county borough or county to whose area the byelaw applies;
  - (b) the council of every community to whose area the byelaw applies.
- (9) The proper officer of the community council must –
  - (a) arrange for a copy of a byelaw sent to the officer to be deposited with the public documents of the community;
  - (b) ensure that the copy is open to public inspection at all reasonable hours without payment.
- (10) In subsections (6) to (9) the “proper officer” is the officer duly authorised for that purpose by that body.

## **9 Power to amend Part 1 of Schedule 1**

The Welsh Ministers may by order amend Part 1 of Schedule 1 (byelaws not requiring confirmation) by adding to or subtracting from the list of enactments, or by amending the type of authority that may make byelaws without confirmation.

### *Enforcement of byelaws*

#### **10 Offences against byelaws**

- (1) Byelaws made by a legislating authority under any enactment may provide that persons contravening the byelaws are liable on summary conviction to a fine.
- (2) The fine must not exceed either –
  - (a) the sum fixed by the enactment which confers the power to make the byelaws, or
  - (b) if no sum is so fixed, level 2 on the standard scale.
- (3) In the case of a continuing offence, the byelaws may provide that the offender is liable on summary conviction to a further fine.
- (4) The further fine must not exceed either –
  - (a) the sum fixed by the enactment which confers the power to make the byelaws, or
  - (b) if no sum is so fixed, the sum of £5 for each day during which the offence continues after conviction for that offence.

#### **11 Section 2 byelaws; powers of seizure etc**

- A byelaw made under section 2 may include provision for or in connection with –
- (a) the seizure and retention of any property in connection with any contravention of the byelaw, and
  - (b) the forfeiture of any such property on a person's conviction of an offence of contravention of the byelaw.

### *Fixed penalty notices*

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

- (1) This section applies to byelaws made by a legislating authority under the enactments listed in Part 2 of Schedule 1 (byelaws in relation to which fixed penalties may be issued).
- (2) If an authorised officer of a legislating authority has reason to believe that a person has committed an offence against a byelaw made by that authority, the officer may give a notice to the person offering the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.
- (3) If an authorised officer of a community council has reason to believe that a person has committed an offence in its area against a byelaw made by a legislating authority other than the community council, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.
- (4) A fixed penalty under this section is payable to the authority whose officer gave the notice.
- (5) Where a person is given a notice under this section in respect of an offence –

- (a) no proceedings may be instituted for the offence before the end of the period of 14 days following the date of the notice, and
  - (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (6) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary to explain why an offence has occurred.
- (7) A notice under this section must also state –
- (a) the period under subsection (5) during which proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty;
  - (c) the person to whom and the address at which the fixed penalty may be paid.
- (8) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person referred to, at the address provided, in the notice.
- (9) If a letter is sent, payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) The Welsh Ministers may by regulations specify the form of a notice under this section.
- (11) In any proceedings a certificate which –
- (a) purports to be signed on behalf of the chief finance officer of an authority, and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (12) In this section –
- “authorised officer”, in relation to an authority, means –
    - (a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under this section,
    - (b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform the function, and
    - (c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;
  - “chief finance officer”, in relation to an authority, means the person having responsibility for the financial affairs of the authority.
- (13) 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 notices under this section.

### **13 Amount of fixed penalty**

- (1) A legislating authority may –
- (a) specify the amount of a fixed penalty payable in pursuance of a notice under section 12;
  - (b) specify different amounts in relation to different byelaws.
- (2) If no amount is so specified, the amount of the fixed penalty is £75.

- (3) The Welsh Ministers may by regulations make provision in connection with the powers under subsection (1).
- (4) Regulations under subsection (3) may, in particular –
  - (a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations;
  - (b) restrict the extent to which, and the circumstances in which, an authority can make provision under subsection (1)(b).
- (5) The Welsh Ministers may by order substitute a different amount for the amount for the time being specified in subsection (2).

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

- (1) If an authorised officer proposes to give a person a notice under section 12, the officer may require the person to give his or her name and address.
- (2) A person commits an offence if that person –
  - (a) without reasonable excuse, fails to give his or her name and address when required to do so, or
  - (b) gives a false or inaccurate name or address in response to a requirement under that subsection.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In this section, “authorised officer” has the same meaning as in section 12.

#### **15 Use of fixed penalty receipts**

- (1) 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 a byelaw was made by the authority.
- (2) “Fixed penalty receipts” means amounts paid to an authority in pursuance of notices under section 12.

#### **16 Power to amend Part 2 of Schedule 1**

The Welsh Ministers may by order amend Part 2 of Schedule 1 (byelaws in relation to which fixed penalty notices may be issued) by adding to or subtracting from the list of enactments, or by amending the type of authority that may offer fixed penalty notices.

#### **17 Community Support Officers etc**

- (1) The Police Reform Act 2002 is amended as follows.
- (2) In Schedule 4 (powers exercised by police civilians) –
  - (a) in paragraph 1ZA(3) after “1972” insert “or under section 12 of the Local Government Byelaws (Wales) Act 2012”;
  - (b) in paragraph 1ZA(5)(a) after “1972” insert “or to which section 12 of the Local Government Byelaws (Wales) Act 2012 applies”.



- (3) In Schedule 5 (powers exercised by accredited persons) –
- (a) in paragraph 1A(3) after “1972” insert “or under section 12 of the Local Government Byelaws (Wales) Act 2012”;
  - (b) in paragraph 1A(5)(a) after “1972” insert “or to which section 12 of the Local Government Byelaws (Wales) Act 2012”.

*Miscellaneous and general*

**18 Guidance**

- (1) The Welsh Ministers may give guidance to legislating authorities about –
- (a) the making of byelaws to which section 6 or 7 applies;
  - (b) the procedure for making byelaws;
  - (c) the enforcement of byelaws;
  - (d) anything related to these matters including –
    - (i) consultation and publication requirements;
    - (ii) the use of fixed penalties.
- (2) A legislating authority must have regard to the guidance when making or enforcing byelaws.

**19 Evidence of byelaws**

- (1) The production of a certified copy of a byelaw purporting to be made by a legislating authority is, until the contrary is proved, sufficient evidence of the facts stated in the certificate.
- (2) For the purposes of this section, 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) The requirements in paragraphs (c) and (d) of subsection (2) do not apply if the byelaw was not subject to confirmation after it was made.

**20 Consequential amendments**

Schedule 2 (minor and consequential amendments) has effect.

**21 Orders and regulations**

- (1) A power to make an order or regulations under this Act (apart from an order under section 22 (commencement)) includes power to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider appropriate.

- (2) In the case of the power under sections 9 and 16, this provision includes provision amending, repealing or revoking enactments.
- (3) Any power of the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under section 9, 13(5) or 16 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) Any other statutory instrument containing an order or regulations under this Act, apart from an instrument containing only an order under section 22 (commencement), is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## **22 Commencement**

- (1) The following provisions come into force on the day after the day on which this Act receives Royal Assent –
  - (a) section 18(1);
  - (b) section 21;
  - (c) this section;
  - (d) section 23.
- (2) The other provisions of this Act come into force on such day as the Welsh Ministers may by order appoint.
- (3) An order under subsection (2) –
  - (a) may appoint different days for different purposes;
  - (b) may include transitional, saving or transitory provision.

## **23 Short title**

The short title of this Act is the Local Government Byelaws (Wales) Act 2012.