



**Report of the Chief Legal Officer for the
Service Improvement and Finance Scrutiny Performance Panel – 23rd June 2021**

Byelaw Process

Purpose:	To brief the Scrutiny Panel on the legislation and processes relating to byelaws
Content:	A briefing/update on byelaws The process of :- <ul style="list-style-type: none">- Creating new byelaws- Amending current byelaws- Removing or superseding obsolete byelaws
Councillors are being asked to:	Consider the information provided
Lead Councillor:	Cross Cutting
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1. Introduction

1.1 Currently the City and County of Swansea has 33 byelaws in force.

1.2 This report provides an update on the process of creating new byelaws, amending current byelaws, removing or superseding obsolete bylaws and enforcement of byelaws.

1.3 A Council for a County or County Borough in Wales may make byelaws:

- 1) For the good rule and government of the whole or any part of its area;
- 2) For the prevention and suppression of nuisances in its area.

1.4 In making a byelaw an authority must decide and evidence that a byelaw is necessary and appropriate for that specific location. The authority also needs to be satisfied that it has the powers to make the byelaws and that it does not duplicate or contradict existing legislation.

1.5 Byelaws should be considered as measures of last resort after a local council has tried to address the local issue through other means.

2. The Local Government Byelaws (Wales) Act 2012

2.1 In 2012 The Local Government Byelaws (Wales) Act 2012 ('the 2012 Act') was passed and it made 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.

2.2 The 2012 Act has simplified the procedures for the making and enforcement of byelaws in Wales.

2.3 The 2012 Act improved the process for confirmation of byelaws, It introduced an alternative procedure which removed the need for confirmation by the Welsh Ministers for some specified byelaws (see Appendix A). This enables a County or County Borough Council to make its own byelaws which don't require confirmation by the Senedd.

2.4 Additionally the 2012 Act provides an alternative, more direct option for the enforcement of byelaws through the introduction of fixed penalty notices.

2.5 A Fixed penalty notice can provide authorities with an effective and visible way of responding to low-level offences, if resources allow.

3. The procedure for making byelaws

3.1 Byelaws in Wales are subject to one of two procedures.

3.2 The 2012 Act removed the need for confirmation by the Welsh Ministers for most byelaws relevant to this Authority - Appendix A sets out which byelaws do not require confirmation.

3.3 Whether a byelaw requires confirmation or not, the process is very similar for both procedures - Appendix B sets out a flowchart of each process.

4. Byelaws not requiring confirmation

4.1 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.

4.2 It is noted that a byelaw made by an authority to amend or revoke an existing byelaw does not require confirmation by the Welsh Ministers.

5. Byelaws requiring confirmation

5.1 Any byelaw not listed in the table set out in Appendix A, requires confirmation by the Welsh Ministers.

5.2 The 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.

6. Consultation

6.1 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.

6.2 Consultation is required for byelaws which require confirmation and those which do not; an authority would follow procedures as below in both scenarios.

6.3 Prior to making 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; and
- b)** Consult any persons (including, where applicable, a Community Council) who the authority thinks is likely to be interested in, or affected by, the issue.
- c)** 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.

6.4 Following the consultation, the authority must consider the responses and decide whether making a byelaw is the most appropriate way of addressing the issue.

6.5 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; and
- c)** Its decision – either to introduce byelaws or to address the problem through other means
- d)** The reasons for the decision.

6.6 The written statement should clearly define:

- 1)** The nature, extent and incidence of the issue or problem;
- 2)** The area in which the issue or problem is being experienced; and
- 3)** All reasonably practicable options, including but not limited to a byelaw, for resolving the issue or problem.

6.7 For at least six weeks before making the byelaw, the authority must ensure that:

- (i)** A draft of the byelaw is published on the authority's website;
- (ii)** A copy of the draft is deposited at a place in the authority's area;
- (iii)** A copy is open to public inspection at all reasonable hours without payment;
- (iv)** Where applicable, a copy is sent to all Community Councils whose areas the authority thinks are likely to be affected by the byelaw.

7. Making the byelaw and the coming into force date

7.1 The preparation of the written statement, the negotiations during consultation process and publication is officer led, with the officers using the model byelaws as provided by Welsh Government.

7.2 The making of the byelaws is subject to specific deadlines. Where the byelaws are not subject to the confirmation procedure, the authority may not make a byelaw later than six months after the date they published the decision notice of their intention to do so.

7.3 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 sealed.

7.4 For byelaws requiring confirmation, copies of the intended Byelaw will be sent to Welsh Ministers for confirmation. Once the Welsh Ministers have confirmed the byelaws the final signed copies will be issued to the authority for sealing with the date of coming into force.

8. Publication of a byelaw once made or confirmed

8.1 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.

9. Revoking Byelaws

9.1 Authorities have powers, implied or otherwise, to amend or revoke byelaws previously made by them under enabling legislation.

9.2 An authority will be able to replace an obsolete byelaw with a new byelaw, whereby a paragraph would be written into the new byelaw setting out the byelaw made on "the date" is revoked.

*"The byelaws relating ** which were made by the Council of the **on the ** day of ** and were confirmed ** on the ** day of ** are hereby revoked."*

10. Model Byelaws

10.1 A number of model byelaws and associated guidance notes have been developed, to support the introduction of certain byelaws.

These provide a template to use when drafting byelaws, setting out appropriate wording for byelaws on a number of different subjects.

11. Enforcement of Byelaws

11.1 There are two principal enforcement routes available: enforcing fines through the Magistrates' Courts or issuing of fixed penalty notices (FPNs).

11.2 The use of FPNs has been offered as an alternative method of enforcement. The benefits of FPNs include cost savings compared to enforcement through the Magistrates' Courts.

FPNs provide a simple and direct process which can save time and personnel input.

11.3 The level of success in enforcing a byelaw will be dependent on an authority having authorised officers available who are adequately trained to issue FPN's and able to patrol the areas.

However by prior agreement; the power of an authorised officer may also be exercised by a Police Community Support Officer or another accredited person.

12. Amount of fixed penalty

12.1 The level of fixed penalties payable in respect of a breach of byelaws that may be specified by the legislating authority is set at a range of £50 to £150, with a default initial amount of £75.

13. Financial Implications

13.1 Additional resources and associated cost will be necessary for the preparation, advertising, promotion, signage and enforcement of byelaws; although the amount is not known at this stage.

14. Conclusions/Key Points Summary

14.1 The making of a byelaw should not be presumed to be the only solution.

14.2 The initial written statement and consultation is designed to seek and establish the most appropriate means of addressing the underlying issue.

14.3 Other solutions which could be considered include using the police with their existing legislation; referring to good practice; following Welsh Government policy; running awareness initiatives; and following codes of conduct.

14.4 The Home Office's Anti-Social Behaviour, Crime and Policing Act 2014 ("The 2014 Act") received Royal Assent in 2014 (revised 2021).

14.5 2014 Act introduced 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.

14.6 Therefore before proceeding to consultation for a new byelaw, authorities should consider whether these and other such means of regulation are more appropriate than making byelaws.

Appendices:

Appendix A – Table Byelaws not requiring confirmation;

Appendix B – Flow chart.

List of byelaw making powers

Part 1 - Byelaws not requiring confirmation

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

Enactment under which byelaws are made	Subject- matter of byelaws	Type of authority by whom the byelaws are made
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
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 hoppers 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 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
Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	Tattooing, semipermanent 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 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
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

Enactment under which byelaws are made	Subject- matter of byelaws	Type of authority by whom the byelaws are made
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	Restrictions on the employment of children in street trading	County council and county borough council

Persons Act 1933		
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
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 hoppickers 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

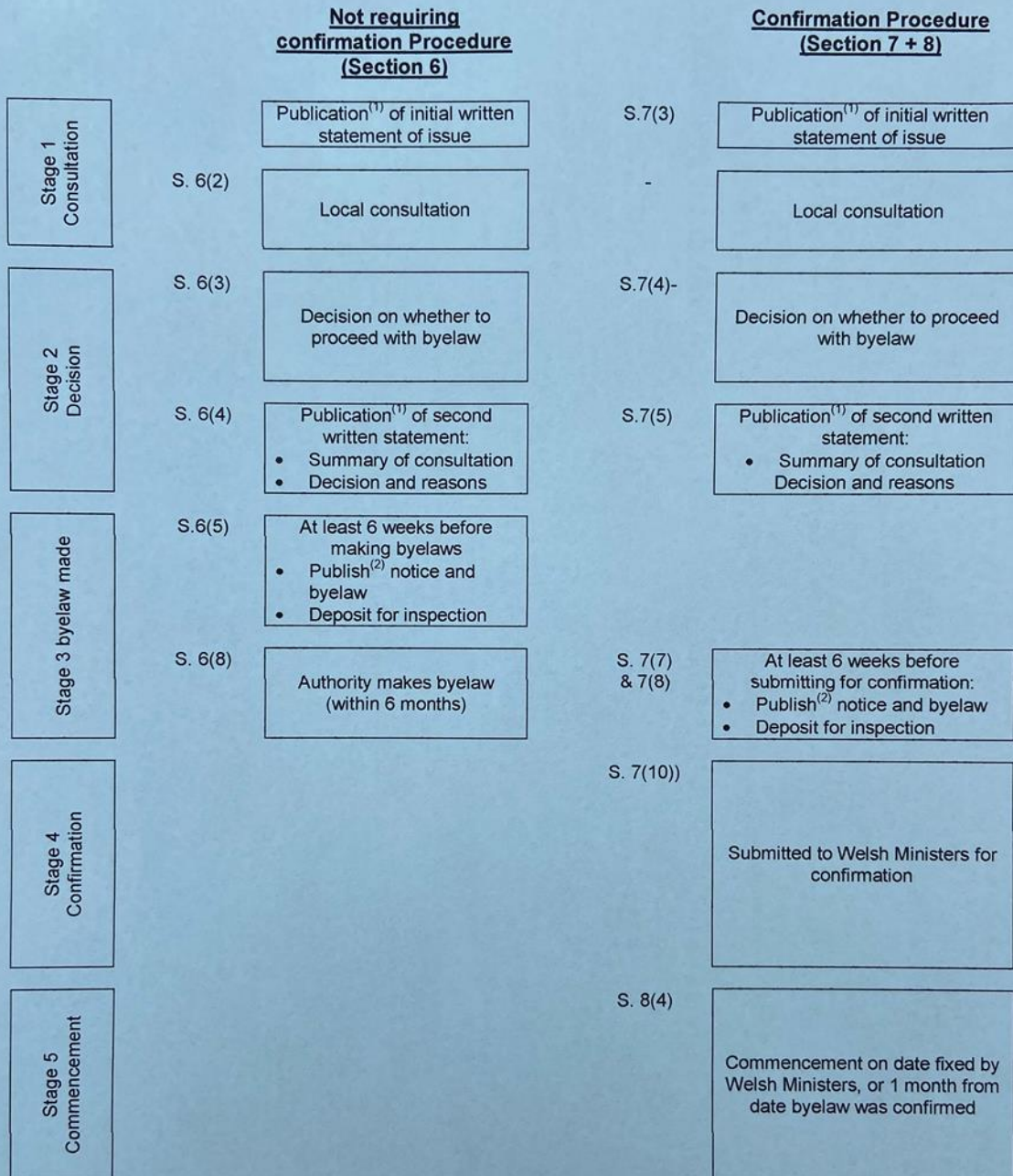
Section 15 of the Local Government	Tattooing, semipermanent skin	County Council County Borough Council
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(Miscellaneous Provisions) Act 1982	colouring, cosmetic piercing and electrolysis	
Section 60 of the Food Act 1984	Regulation and prevention of nuisances 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
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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
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.

Annex B

Byelaw-making procedures flowchart



Notes:

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