Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 - Senedd

Meeting date:
22 February 2012

Meeting time:
09:30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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Agenda

1. Introductions, apologies and substitutions

2. Local Government Byelaws (Wales) Bill: Evidence Session (Pages 1 - 14)

Paper 1: Further Evidence from the Minister

Minister for Local Government and Communities, Carl Sargeant
Louise Gibson, Lawyer
Stephen Phipps, Ethics and Regulation Team

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

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16th February 2012

Local Government Byelaws (Wales) Bill

Thank you for your letter dated 24 January asking a number of questions following my appearance before your committee to discuss the Local Government Byelaws (Wales) Bill.

I have considered these questions and my response to each of the points raised can be found in the attached document.

During the meeting I agreed to provide the committee with additional information. A note on case law on the use of the terms 'good rule and governance' and 'suppression of nuisances' has been prepared and can be found at Annex A of the document, whilst a flowchart detailing the process for the creation of a byelaw can be found at Annex B.

During the meeting I also agreed to give further regard to the consideration of byelaws by full council and the executive. As I explained at the meeting, the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended by the 2009 Regulations) ("the regulations") which are made under the Local Government Act 2000 provide that the power to make, amend, revoke or re-enact byelaws is not a power for which an authority's executive is to be responsible. The effect of this is that the power is the responsibility of the authority. While the regulations do not currently require the full council to deal with the byelaw at every stage, it would be at the discretion of the local authority as to whether they wish to delegate the functions relating to byelaws to a committee to deal with each part of the byelaw process.

We take the view that the regulations sufficiently and appropriately provide for the full council to be engaged to a proportionate degree in the key aspects of the byelaw process. Our Bill aims to simplify the byelaw making and enforcement process and in turn reduce bureaucracy and the burden on byelaw making authorities.

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The Bill acknowledges that local authorities are best placed to deal with byelaws which are made to address very local issues. To require the full council to deal with every stage of the byelaw making process would interfere with the process and serve to increase the complexity and bureaucracy which contravenes the inherent policy purpose which the Bill seeks to achieve.

I hope that these responses answer your queries.

Yours sincerely

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities

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Response to Questions raised by CELG Committee following Stage 1 Scrutiny Meeting on 12th January 2012.

Can you explain why the functions of Welsh Ministers to act as a confirming authority under subsection 7(8)(b) are to be 'exercisable concurrently with the Secretary of State'?

Section 236(11) of the Local Government Act 1972 ("the 1972 Act") provides that the 'confirming authority' for a byelaw is the authority or person specified in the enactment under which the byelaw is made. If no authority or person is specified, the confirming authority is the Secretary of State. As a consequence of the establishment of the National Assembly for Wales, Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 ("the 1999 Order") provided that the functions of the Secretary of State under section 236(11) were exercisable by the National Assembly concurrently with the Secretary of State. Following enactment of the Government of Wales Act 2006, the concurrent functions of the National Assembly in this regard transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of schedule 11 to the GOWA 2006.

Clause 7(9) of the Bill is consistent with our policy approach of consolidating the existing byelaw provisions from the 1972 Act in this Bill and preserves the current position under the 1999 Order.

The concurrent confirmation power under the 1999 Order reflects the view that there may be byelaw powers that deal with non-devolved areas and are in practice, and as is appropriate, confirmed by the relevant Secretary of State. Since the 1999 Order, in practice requests for confirmation of byelaws under devolved powers are considered by the Welsh Ministers. Accordingly, the concurrent confirmation power is a prudent provision in the event that any such powers are identified at a future point.

Have you obtained the Secretary of State's consent to this as required by Part 3 of Schedule 7 to the *Government of Wales Act 2006*, and if not, why?

It is the view of the Welsh Government that the consent of the Secretary of State is not needed as the effect of clause 7(9) of the Bill is that it does no more than preserve the status quo which prevails under section 236(11) of the Local Government Act 1972, as modified by article 2 of and Schedule 1 to the 1999 Order. The intention of the Bill as clause 7 provides is to consolidate the law in this area and to preserve the procedure for confirmation of those byelaws which are not made under the new procedure in clause 6 of the Bill.

We do not consider that the Bill confers any additional functions on the Secretary of State over and above the concurrent functions that exist under section 236(11) of the Local Government Act 1972 and therefore consent under paragraph 6 of Schedule 7 is not required.

Why have you considered it necessary to include the power (in section 9) for Welsh Ministers to amend the list of byelaws that do not need ministerial confirmation?

The inclusion of this power is a sensible provision which will enable Welsh Ministers to react to changing circumstances in future. It ensures that we are delivering legislation that will remain up to date and is reactive to the changing circumstances faced by legislating authorities in dealing with byelaws. For example, there are a number of byelaw-making powers that will continue to require confirmation by the Welsh Ministers. Although it is not envisaged at this time, clause 9 would enable the Welsh Ministers to add those byelaw making powers to Part 1 of Schedule 1, as further byelaws that will not require confirmation in the future. The exercise of this power is subject to affirmative resolution by the National Assembly, which will ensure an appropriate level of scrutiny.

How have you decided on the types of byelaws that may be subject to the fixed penalty notices regime?

It is limited to byelaws made by County and County Borough Councils and Community Councils. One of the reasons for this is because these legislating authorities, in practice are responsible for making and using byelaws most frequently and already operate effective FPN regimes in other areas. For example, with regards to the issuing of FPNs for a variety of low-level environmental offences under the Environmental Protection Act 1990, as amended and extended by the Clean Neighbourhoods and Environment Act 2005.

Why have you decided that it is appropriate for Welsh Ministers to be able to make regulations to limit the range of fixed penalties that can be imposed? Why are these limits not set out on the face of the Bill?

The Bill mirrors the provisions of section 237B of the 1972 in relation to the enforcement of byelaws in England, which in turn is consistent with similar provisions in the Clean Neighbourhoods and Environment Act 2005.

This will enable the Welsh Ministers to ensure there is a consistent approach across all legislating authorities. The power will enable Ministers, if appropriate, to prescribe different ranges for different types of byelaws. This level of detail is appropriate to regulations as it will enable the Welsh Ministers to react quickly to changing needs. The actual range of fixed penalties will be subject to consultation in due course.

Under section 14, is it proportionate to allow fines of £1,000 for failing to provide correct personal details, when the fine for the substantive offence is set at a maximum of £500?

This muddles enforcement through the Courts and the provisions relating to fixed penalties. Clause 10, which deals with enforcement through the Courts, is

derived from section 237 of the 1972 Act. It provides that a person contravening a byelaw is liable on summary conviction by the Court to a fine. Such fine is to be the sum fixed in the enactment which confers the power to make the byelaw, or where no such sum is fixed level 2 on the standard scale (ie currently £500).

The fixed penalty provisions are modelled on comparable provisions in the Clean Neighbourhoods and Environment Act 2005. Failing to comply with an authorised officer's request for information, without reasonable excuse, is a serious matter and is thus reflected in the maximum level of fine (ie level 3 on the standard scale, currently £1,000). It will be for the Courts to determine the actual fine taking account of the circumstances of the case.

Why have you considered it necessary to include the power (in section 16) for Welsh Ministers to amend the list of byelaws that may be subject to fixed penalty notices?

As with clause 9, this power is a sensible provision which will enable the Welsh Ministers to react to changing circumstances in future. The exercise of this power is subject to affirmative resolution by the National Assembly, which will ensure an appropriate level of scrutiny.

Under section 18, what sort of matters do you expect to be covered in the statutory guidance given to authorities?
Why are these matters not set out on the face of the Bill?

Statutory guidance will support authorities in adopting appropriate and consistent approaches to making and enforcing byelaws. It will enable Ministers to provide practical guidance at a level of detail that it is not appropriate, or practicable, to set out on the face of the Bill. This will include, but is not limited to, the recommended consultation processes to be followed prior to deciding to make a byelaw and guidance on the implementation of fixed penalties as a means of enforcement. Model byelaws are also being developed to assist authorities in making byelaws that are fit for purpose.

Are you confident that the Bill contains sufficient scrutiny arrangements in respect of the statutory instruments that can be made under the Bill?
How did you decide on the relevant Assembly procedure that would apply in each case?

The Bill strikes an appropriate balance between the level of detail on the face of the Bill and that which will be contained appropriately and correctly in subordinate legislation.

The appropriate Assembly procedure has been considered on a case by case basis. In general, powers that enable Welsh Ministers to make consequential amendments to the provisions of this Bill or other primary legislation are subject to the affirmative procedure.

Powers that simply enable the addition of practical detail to the primary legislative framework set out in the Bill are subject to the negative procedure.

The approach taken is consistent with Welsh Government guidelines on the choice of affirmative or negative procedure for subordinate legislation about which the Counsel General wrote to the Chair of the Constitutional and Legislative Affairs Committee on 24 January 2012. A copy of the guidelines have been placed in the Assembly Library.

The Explanatory Memorandum states that the current arrangements may have deterred authorities from making byelaws in the past. Yet the Memorandum also states that the number of byelaws made each year is not expected to change materially despite the Bill now making that process less onerous. How do you reconcile those two statements?

This Bill contains practical proposals that will remove a layer of unnecessary bureaucracy and enable local authorities to respond to problems they face in their communities in a timely and direct manner.

Whilst authorities have a range of options available to them to tackle anti-social and nuisance behaviour, I believe these proposals will make byelaws a more attractive option. In this context, whilst we may see some increase in the numbers of byelaws, it remains to be seen whether this will amount to a material increase. The more streamlined approach may encourage authorities to consider amending or revoking historical or obsolete byelaws where the current procedure may have been regarded as a deterrent.

How confident are you that the estimations of costs and savings set out in the Explanatory Memorandum will accurately reflect the actual costs and savings that will result from changes made by the Bill?

While this Bill seeks to introduce more streamlined approaches to the making and enforcement of byelaws, it is for authorities to determine when it is appropriate to make use of the powers provided. Consequently, the Bill is not expected to have significant cost implications one way or the other. Actual costs and savings will differ between different types of byelaws and the nature of the issue being addressed.

How have you calculated the estimated cost and savings in the Explanatory Memorandum, considering that there is not a great deal of information to back up those figures?

The estimates given in the Explanatory Memorandum are based on our experience of processing byelaws in recent years. They draw on information helpfully provided by the Association of County Secretaries and Solicitors.

Annex A

Note on Case law in response to CELG Committee request

Question (Peter Black AM)

Please provide a note on case law regarding the use of the term at clause 2 of the Local Government Byelaws (Wales) Bill, namely the 'power of councils to make byelaws for good rule and government and for the prevention and suppressions of nuisances in its area'.

Advice

1. Case law does not appear to provide a definitive interpretation of 'good rule and government and the prevention and suppression of nuisances'. However, the Courts in their consideration of the validity of byelaws made pursuant to this power have applied consistent principles which have developed throughout the body of case law in this area, as detailed in the note below. In each case, the Courts also apply consideration regarding whether such byelaws uphold the general public law duty to act fairly and reasonably. These are the clear tests developed by case law which are applied in respect of byelaws made pursuant to this power.

2. Accordingly, while the Courts have not provided byelaw making authorities with an express definition of what is considered to be the meaning of 'good rule and government and for the prevention and suppression of nuisances', in their scrutiny of the validity of byelaws, the application of certain principles have been repeatedly applied. This provides clarity and a long established reference for byelaw making authorities with regards to the interpretation of the byelaw making power for 'good rule and government and for the prevention and suppression of nuisances' exercised in the area of a byelaw making authority.

3. The Courts have consistently held that they will not readily interfere to set aside as unreasonable and void a byelaw made by a local authority as long as it is reasonable, certain, consistent with the general law and within the powers of that authority. Therefore, as is the current position and that proposed by the Local Government Byelaws (Wales) Bill, if a legislating authority seeks to observe these principles, it is likely to be acting within its powers under clause 2 of the Bill to 'make byelaws for good rule and government and for the prevention and suppression of nuisances.'

Case law Note

<u>Judicial Tests as to the validity of byelaws</u>

4. *R* v *Reading Crown Court, ex parte Hutchinson and another*[1] confirmed that Justices of the Crown Court have authority and are bound to inquire into the validity of byelaws if that is raised by way of defence. Byelaws are therefore subject to scrutiny by the courts. Certain rules as to assessing their validity can be seen to have developed. Cross on Local Government Law states that these are that 'the byelaw must be reasonable, certain in its terms, consistent with the general law,

[1] [1988] Q.B. 384

and intra vires the authority which made it.' It adds that these rules may all be regarded as aspects of the ultra vires doctrine.[2]

Reasonableness

5. The 'reasonableness' of byelaws has consistently been considered by the courts. In *Kruse* v *Johnson,* the **lead byelaw case** on 'good rule and government and for the prevention and suppression of nuisances', Lord Russell C.J. distinguished between byelaws made by local authorities, being bodies of a public representative entrusted by Parliament with delegated authority from companies which carry on their business for their own profit, although incidentally for the advantage of the public. In the case of the former, Lord Russell noted that they 'ought to be supported if possible...and credit ought to be given to those who have to administer them **that they will be reasonably administered**' although equally courts should not shy from condemning as invalid unreasonable byelaws.[3]

6. The dicta of Lord Russell C.J. confirms that **byelaws would be unreasonable if** "they were found to be **partial and unequal in their operation** as between classes; if they were **manifestly unjust**; if they **disclosed bad faith**; if they involved such **oppressive or gratuitous interference with the rights** of those subject to them as could find no justification in the minds of reasonable men, the court might say, 'Parliament never intended to give authority to such rules; they are unreasonable and ultra vires". A byelaw would not however, be unreasonable 'merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there.'[4]

7. In considering the question of reasonableness in *Simmons* v *Malling*, Wright J also expressed a broad and inclusive approach, saying that he did not think that a byelaw 'should be held unreasonable on the ground that in a particular case inconvenient consequences might result from its enforcement; it is **the public interest as a whole which has to be considered**.'[5]

8. The case of *Scott* v *Pilliner* revealed an example of what the court believed to be an 'unreasonable' byelaw. Although the courts restated the **importance of the principle** laid down in the case of *Kruse* v *Johnson*[6] amongst others, namely that the **court ought not to interfere with a byelaw if it can be supported on reasonable grounds,** it held (Phillimore J dissenting) that the byelaw was deemed to be 'bad' because it was both too uncertain and too wide.[7] The byelaw in question imposed a penalty on any person frequenting and using any street or public place "for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeple-chases, or other competitions." Lord Alverstone C.J. said that the width of this byelaw meant that it might strike 'at perfectly innocent sales of papers' and therefore could not be upheld.[8]

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[2] 6-07, Cross R.35: March 2010.
[3] [1898] 2 Q.B. 91 at 99.
[4] [1898] 2 Q.B. 91 at 99 -100.
[5] [1897] 2 Q.B. 433 at 483.
[6] (1898) 2 Q.B. 91.
[7] as per Lord Alverstone C.J. [1904] K.B. 855 at 859.
[8] at 859.

'Reasonableness' and 'unreasonableness' of byelaws made under other enabling powers

9. The courts' view that the ability of a byelaw making authority to exercise their byelaw making powers subject to the public law duty to act fairly and reasonably can be seen to apply to byelaws made under other enabling powers also. This is useful as it is of analogous value in noting the rationale of the court in determining the reasonableness of a byelaw. In *Cinnamond* v *British Airports Authority*, in consideration of the application of the Heathrow Airport – London Byelaws 1972, Lord Denning said 'the simple duty of the airport authority was to **act fairly and reasonably**.'[9] The enabling power in this case allowed the British Airports Authority power to do "anything calculated to facilitate the discharge of its duties."[10] Similarly, in the case of *R* v *British Airports Authority ex parte Wheatley* (1983) which concerned the application of the London (Gatwick) Airport Byelaws 1966 made under section 9 of the Airports Authority Act 1975, reasonableness was again considered.[11]

10. Conversely, in *Noakes* v *Islington*, a byelaw made under the Public Health (London) Act, 1891 was held to be unreasonable because it contained no provision for giving notice of the requirements of the authority to the person against whom it was contemplated that proceedings should be taken for breach of the byelaw.[12]

Intra vires

11. Byelaws made by a byelaw making authority must have their source in statute law and must be within the scope of that statutory provision. In *R* v *Wood* a byelaw which directed all occupiers to remove all snow from the footpath opposite their premises was held to be ultra vires for going beyond the enabling powers which specified the making of byelaws with respect to the removal by occupiers of dust, ashes, rubbish, filth, manure, dung and soil.[13]

Compatibility with Human Rights Law

12. Consideration must always be given to ensure that a byelaw made under this power (and indeed any) is compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention of Human Rights) and the Human Rights Act 1998[14]. The provisions of a byelaw may be ultra vires if they violate Convention rights.[15]

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[9] [1980] 2 All ER 368 at 375.
[10] Section 2(3) of the (now repealed) Airports Authority Act 1975.
[11] [1983] RTR 466.
[12] [1904] 1 K.B. 610.
[13] (1855) 5 E. & B. 49. See also the more recent case of *DPP* v *John* [1999] 1 W.L.R (here a byelaw made by the Secretary of State for Defence under the Military Lands Act 1892 s.14, in respect of 'land appropriated for any military purpose was conversely held to be intra vires despite the fact that the land in question was not currently used for military purposes."
[14] (1998)(c.42)
[15] *Tabernacle* v *Secretary of State for Defence* [2009] EWCA Civ 23 (a byelaw that prohibited camping on land near the Atomic Weapons Establishment at Aldermaston was held to violate the art. 10 right of members of the Aldermaston Women's Peace Camp to peacefully protest).

'Bad' and 'repugnant' byelaws

13. Section 235(3) of the Local Government Act 1972[16] expressly provides that byelaws 'shall not be made under this section for any purposes as respects any area if provision for that purpose as respects that area is made by, or is or may be made by any other enactment.' The courts have also held that byelaws which contradict the provisions of an existing statutory provision will be 'bad' and 'repugnant to the law' and as a result held to be both unreasonable and ultra vires.[17] Goddard C.J. stated in *Morrissey* v *Galer* that 'no one doubts, if the statute deals with precisely the same matter, the byelaw would be ultra vires because if it deals with precisely the same matter as the statute there is no necessity for it, and if it tries to go beyond the statute it is bad.'[18]

14. However, this does **not** mean that a byelaw may not add to the law, making an offence where none previously existed.[19] Byelaws may of course extend the law **if** they are **'a supplement to the law in keeping with it**.'[20] Further, **local circumstances** may be a relevant consideration. In *Thomas* v *Sutters* Sir F H Jeune said:

"When an Act of Parliament has forbidden certain things to be done in certain places, it seems to be perfectly consistent with that, that a municipality, with regard to their particular locality, should go somewhat beyond the Act, not contravening its spirit, but carrying it out, and making regulations somewhat wider than those to be found in the Act".[21]

15. Channell J summarised the position usefully in *White* v M*orley* when he said 'by-laws must not only be reasonable, but must not be repugnant to the general law. **A by-law is a local law, and may be supplementary to the general law; it is not bad because it deals with something that is not dealt with by the general law**. But it **must not alter the general law** by making that lawful which the general law makes unlawful; or that unlawful which the general law makes lawful.'[22]

'Nuisances'

16. In *Gentel* v *Rapps,* Lord Alverstone said 'the judgments in *Kruse v Johnson* and the cases decided with respect to by-laws prohibiting betting, **recognise the right of the authority, entrusted with the power of making by-laws to prohibit acts which may be nuisances, to define and describe what shall be a nuisance under particular circumstances**.'[23] Similarly, Channel L.J agreed, stating that 'where an authority, or body of persons, have been given power to make by-laws for the preventing of nuisances, they **have also power to declare** that particular things, if capable of being nuisances, **are when done in their district nuisances**. **The very power which is given to them** involves their having **authority to say** what, in particular places and under particular circumstances, **shall be nuisances**.'[24]

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[16] 1972 (c.70).
[17] See *London Passenger Transport Board* v *Summer* (1935) 99 J.P. 387.
[18] [1955] 1 W.L.R. 110 at 112.
[19] *Morrissey* v *Galer* [1955] 1 W.L.R. 110.
[20] 6-07 Cross R.38: March 2010.
[21] [1899 T. 960] – [1900] 1 Ch.10 at 16.
[22] [1899] 2 Q.B. 34 at 39.
[23] [1902] 1 K.B 160 at 164.
[24] [1902] 1 K.B 160 at 165.

17. The courts have held that 'nuisances' are to be interpreted widely and prima facie by the byelaw making authority themselves following consideration of local circumstances, subject to the above duty to act fairly and reasonably. Ultimately byelaws are made by local authorities to address local issues which a local authority is best placed to decide. In doing so, the case law highlights that the byelaw making authority is also best placed to decide what constitutes a 'nuisance' in respect of the particular circumstance that they seek to address by the use of a byelaw. The body of case law determines that the power to make a byelaw, exercised by a local authority, entitles that byelaw making authority to decide what will be a 'nuisance' under the particular circumstances. The onus therefore remains with the local authority to exercise this determination and ensure that it is appropriate and reasonable.

'Good rule and government' further

18. In accordance with the above, it was said in the case of *Slowey* v *Threshie* that there was no substantial difference between 'good rule and government' and 'administration of the affairs in the country'.[25]

19. Following on from the lead case of *Kruse v Johnson*[26] and the cases detailed above, in *Thomas v Sutters*[27], the Court of Appeal considered the scope of the byelaw making power 'for the good rule and government and for the prevention and suppression of nuisances.'[28] Lord Lindsay MR stated that he **could not conceive any reason why the Court should limit the language of that section** or **should not give it full effect**. The argument was that the byelaw was 'bad' because it dealt with a matter with which Parliament had already dealt in Section 23 of the Metropolitan Streets Act 1867. Moreover, Lord Lindsay MR having considered the differences between the two provisions concluded that:

".....It appears to me that **we should be going a great deal too far if we were to say that this byelaw is not and cannot reasonably be construed as made for the 'good rule and government'** of the County of London. The **County Council** have **ample power to say that in their opinion it is so made** and **unless there is some good reason to the contrary, unless there is some clear excess of jurisdiction** we ought rather to uphold than to invalidate the byelaw."

20. The following more recent cases of *Powell v May*[29] and *Galer v Morrissey*[30] saw the Divisional Court applying the same principles. In *Powell v May*, the Court held that the byelaw concerned was repugnant to the statute, while in *Galer v Morrissey* it was not. These cases and dicta were also referred to in the recent case of *Owen v Director of Public Prosecutions*[31] whereby the council had sought to make a byelaw for the 'good rule and government and for the prevention and suppression of nuisances.'[32]

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[25] as per Lord Justice-Clerk [1901] 3 F. (J.) 73 at 74 in the context of the difference between the wording of the Local Government (Scotland) Act 1889 and the Local Government Act 1888.
[26] (1898) 2 Q.B. 91.
[27] (1900) 1 Ch 10.
[28] As then, was section 23 of the Municipal Corporations Act 1882.
[29] (1946) 1 KB 380, 1 WLR 110.
[30] (1955) 1 All ER 380.
[31] (1994) Crim LR 192, CO/2519/92.
[32] In pursuance of section 249 of the Local Government Act 1933 (c.51), now and treated for the purpose of that case as in pursuance to section 235 of the Local Government Act 1972 (c.70).

21. Pill LJ determined that the byelaw (which dealt with public decency) came within the purpose of the byelaw making power pursuant to section 235 of the Local Government Act 1972[33] and that the byelaw sought to cover a range of conduct. He noted that the scope of the byelaw was far from identical with that of the general law and that the purpose for which that conduct was proscribed was sufficiently different from that of other enactment's so as to avoid offending against the provisions of section 235(3) of the Local Government Act 1972[34]. Pill LJ concluded that the byelaw was valid.

22. The older but still useful case for the purposes of interpretation is that of *Strickland v Hayes.*[35] This considered a byelaw made by a county council pursuant to the byelaw making power for the 'good rule and government and for the prevention and suppression of nuisances.' The byelaw sought to prevent the singing or reciting of any profane or obscene song or ballad or the use of such language in any street or public place, or on land adjacent thereto. It was held by the Court that the byelaw was invalid, as even if the words 'or on land adjacent thereto' which were clearly too wide were struck out, the byelaw would remain **unreasonable because it did not contain any words importing that the acts must be done so as to cause annoyance**.

23. The subsequent case of *Burnett v Berry*[36] also considered a byelaw made for the 'good rule and government and for the prevention and suppression of nuisances' with regards to the prevention of using any street or other public place for the purpose of bookmaking or betting. It was held that the byelaw was properly made for the good rule and government of the borough and was therefore valid. In reaching this determination, Lord Russell of Killowen CJ noted that each byelaw must be judged **by its own language** and in doing so regard must be had **to the circumstances** to which it is addressed.

24. The dicta of Lord Russell is helpful as it highlights that consideration must be given to the **object of the byelaw** and whether it is **justified**, while having regard to the **particular matter it seeks to address**, as being **necessary or useful** for the **purposes of the good rule and government** of the borough. Lord Russell of Killowen C.J considered the **intention of the byelaw** was clearly not meant to apply to men meeting casually in the street and making bets together but to prevent persons whose business is that of bookmaking and betting, from using the streets and public places for the purpose of carrying out their business of betting. Lord Russell notes that the byelaw sought to prevent this being done in places where it would consider **annoyance would be likely** to be caused to passers-by, where numbers of persons might probably assemble, and would **thus be against the good rule and government of the borough**.

25. Following on from this, the case of *Mantle v Jordan*[37] again considered a byelaw made by a county council for the 'good rule and government and for the prevention and suppression of nuisances.' The byelaw in this case sought to prohibit the use of violent, abusive, indecent, profane and obscene language or gesture, or conduct by any person in any place abutting on or near to a public place, to the annoyance of any person in a street or public place. It was held that the byelaw was valid and to have been made for 'good rule and government and for the prevention and

[33] 1972 (c.70).
[34] 1972 (c.70).
[35] (1896) 1 Q.B. 290.
[36] (1896) 1 Q.B. 641.
[37] (1897) 1 Q.B. 248.

suppression of nuisances'[38] and that the conduct of the respondent in the case had amounted to nuisance.

26. In addition, to the case law it is relevant to note that the key legal texts and encyclopaedia's support the interpretation of this byelaw making power by virtue of the case law detailed above. There is no definition provided for 'good rule and government and for the prevention and suppression of nuisances' in the key legal texts e.g Halsbury's Laws of England, Words and Phrases legally defined, and reference is always to the body of case law and the principles that flow from this to assist with the interpretation if query should arise in this regard.

A general presumption in favour of validity of byelaw made by a local authority

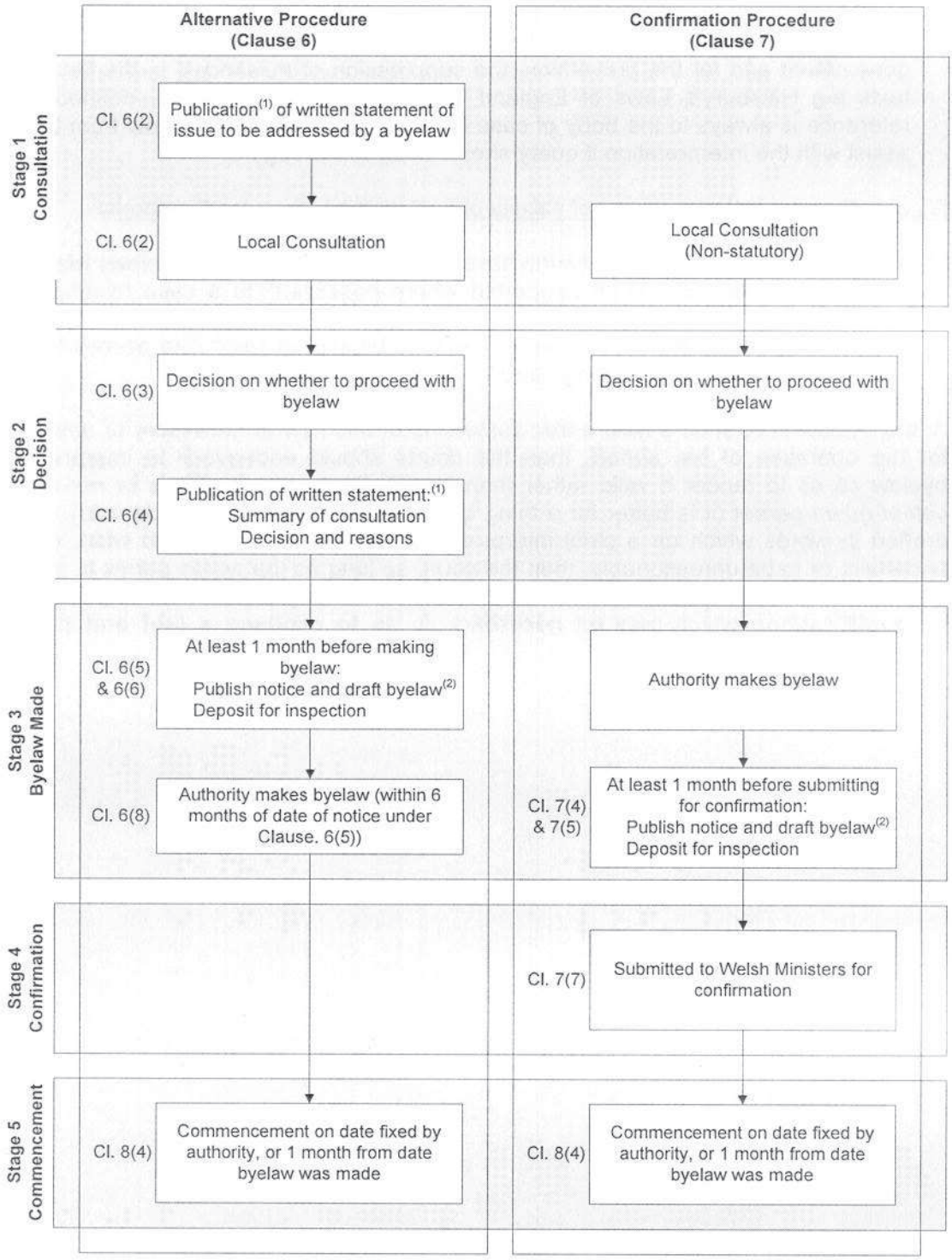
27. As noted in paragraph 7, the courts have expressed the view that byelaws made by public authorities, should be supported where possible.[39] In a case relating to a byelaw made pursuant to a power in the Airports Authority Act 1975 to make byelaws regulating the use' of airports and 'prohibiting or restricting access to any part' of an airport, Lord Denning said:

"If the byelaw is of such a nature that something of this kind is necessary or desirable for the operation of the airport, then the courts should endeavour to interpret the byelaw so as to render it valid rather than invalid. The Latin maxim is *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). If it is drafted in words which on a strict interpretation may be said to be too wide, or too uncertain, or to be unreasonable, then the court, so long as the words permit it, should discard the strict interpretation and **interpret them with any reasonable implications or qualifications** which may be necessary so as **to produce a just and proper result.**"[40]

[38] Within the meaning of section 23 of the Municipal Corporations Act 1882, repealed and replaced by section 235 of the Local Government Act 1972 (C.70).
[39] *Attorney-General and another* v *Hodgson* [1922] All ER Rep 186 also found to the effect that the court ought not to interfere with a bye-law made by a local authority if it could be supported on reasonable grounds.
[40] *Cinnamond* v *British Airports Authority* [1980] 2 All ER 368 at 374.

Annex B

Local Government Byelaws (Wales) Bill – Byelaw Making Procedures



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