

LOCAL GOVERNMENT BYELAWS (WALES) BILL

Explanatory Memorandum to Local Government Byelaws (Wales) Bill

This Explanatory Memorandum has been prepared by the Local Government and Communities Department of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Local Government Byelaws (Wales) Bill, introduced by me on the 28 November 2011, would be within the legislative competence of the National Assembly for Wales.

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Minister for Local Government and Communities
Assembly Member in charge of the Bill

28 November 2011

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ANNEX 1 – EXPLANATORY NOTES

1. Description

1.1 The proposed Local Government Byelaws (Wales) Bill gives effect to the Welsh Government's proposals to simplify procedures for making and enforcing local authority byelaws. The Bill introduces an alternative procedure for local authorities to follow in making a number of byelaws. For these byelaws, the Bill requires authorities to consult locally before making a byelaw and removes the requirement for confirmation by the Welsh Ministers. The proposed Bill also provides an optional alternative, and more efficient, means of enforcement through fixed penalty notices. Finally, the Bill also recasts and consolidates existing byelaw provisions in sections 235 to 238 of the Local Government Act 1972. This is a step towards the development of a Welsh Statute Book and makes the key legislative provisions relating to making, confirming and enforcing byelaws in Wales accessible in a single enactment.

2. Legislative background

Subject in Schedule 7 of GOWA 2006

2.1. The National Assembly for Wales has the legislative competence to make provision for and in connection with byelaws by virtue of the subject which relates to powers and duties of local authorities and their members and officers under the heading of local government in Schedule 7, subject 12 of the Government of Wales Act 2006 (“GOWA 2006”). The National Assembly for Wales also has the legislative competence to make these provisions pursuant to section 108(4), (5) and (7) of GOWA 2006. In addition, the National Assembly for Wales also has the legislative competence to make provision for the procedure for making and enforcing byelaws by National Park authorities in Wales and the Countryside Council for Wales by virtue of the subjects which relate to countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty), nature conservation and sites of special scientific interest under the heading of environment in Schedule 7, subject 6 of GOWA 2006.

2.2. Schedule 7, subject 12 of GOWA is reproduced below:

Local Government

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Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

“Local authorities” does not include police authorities.

Exceptions—

Local government franchise.

Electoral registration and administration.

Registration of births, marriages, civil partnerships and deaths.

Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

Anti-social behaviour orders.

Local land charges, apart from fees.

Sunday trading.

Provisions of advice and assistance overseas by local authorities in connection with carrying on their local government activities.

2.3 Section 108 of GOWA is reproduced below:

Legislative Competence

(1) Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.

- (2) *An Act of the Assembly is not law so far as any provision of the Act is outside of the Assembly's legislative competence.*
- (3) *A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (4) or (5).*
- (4) *A provision of an Act of the Assembly falls within this subsection if –*
 (a) *it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings),*
 and
 (b) *it neither applies otherwise than in relation Wales.*
- (5) *A provision of an Act of the Assembly falls within this subsection if—*
 (a) *it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective,*
 or
 (b) *is otherwise incidental to, or consequential on, such a provision.*
- (6) *But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—*
 (a) *it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,*
 (b) *it extends otherwise than in only to England and Wales,*
 or
 (c) *it is incompatible with the Convention rights of Community law.*
- (7) *For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances.*

2.4 Schedule 7, subject 6 of GOWA is reproduced below:

Environment

Environmental protection, including pollution, nuisances and hazardous substances. Collection, management and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Small holdings and allotments. Common land. Town and village greens. Burial and cremation [except coroners' functions].

3. Purpose and intended effect of the legislation

Policy objectives and why government intervention is considered necessary

Problem or issue

3.1. The Local Government Policy Statement ‘A Shared Responsibility’, March 2007, made a commitment under the heading of “bureaucracy reduction” to consider and consult on potential changes to simplify the process for making local government byelaws in Wales. This acknowledged that the current system of making, confirming and enforcing most byelaws was overly bureaucratic, outdated and cumbersome.

3.2. In June 2010, the Welsh Government carried out a consultation into the procedures for making, confirming and enforcing local authority byelaws. This was an opportunity to find out views on simplifying the byelaw process and also to get feedback on how the process works currently.

3.3. The response to the consultation is covered in Section 4 and Appendix A of this document and provides a useful insight into the byelaw process in Wales. Whilst definitive figures are not available, it is estimated that an average 4 - 5 new byelaws per year have been confirmed by the Welsh Ministers over the past five years. Many authorities still have byelaws in operation which have been in place for decades. In one recent example, an authority was undertaking a review of parks byelaws introduced before 1976.

3.4. The need for byelaws has changed over the years. There is legislation now such as dog control orders under the Clean Neighbourhoods and Environment Act 2005 which have superseded the use of byelaws in this area. However, there are still a large number of byelaw powers which continue to provide an effective and flexible method of addressing a variety of local problems. This is one of the reasons why the Welsh Government is bringing forward this Bill so that the process for making, revoking and enforcing byelaws may be less onerous. Although the number of byelaws made each year is not expected to change materially as a result of the proposed changes, the previous process may have well deterred local authorities from making new byelaws in the past.

3.5. The Bill seeks to streamline the procedure for making byelaws primarily by removing the requirement for confirmation by the Welsh Ministers of specified new byelaws. The Welsh Government’s view, endorsed during consultation, is that the process leading up to the Welsh Ministers confirmation adds little, if any, value to what are properly local considerations and decisions. It simply adds another level of administration and causes delay. However, although this applies to many byelaws which address very localised and specific issues, some byelaws such as the environment byelaws and the employment of children byelaws can be controversial and have wider implications. Response to the consultation agreed that it was advisable to retain the Welsh Ministers’ role in these cases. For this reason there will be a dual process for the making and coming into force of byelaws in Wales as the Bill also preserves the current

confirmation procedure which works well in respect of those byelaws where confirmation is deemed necessary.

3.6. The Bill also provides an alternative form of enforcement through fixed penalty notices, which aims to be a more effective and efficient form of enforcement action than through the Magistrates Courts. Whilst the benefits of fixed penalty notices were acknowledged in the consultation exercise, respondees made clear that enforcement through the existing Magistrates Courts procedure should be retained. The Bill therefore provides fixed penalty notices as an optional means of enforcement by local authorities for those byelaws listed in the Bill as subject to enforcement by fixed penalty notices. Implementation of the Clean Neighbourhoods and Environment Act 2005 has shown that many unitary authorities have embraced the power to issue fixed penalty notices and are using them successfully. Importantly, they are demonstrating responsibility in using the powers correctly, proportionately and legally.

Who is affected?

3.7. Unitary authorities, national park authorities and community and town councils will be affected by this legislation and will benefit from a less bureaucratic and more proportionate approach to making and enforcing certain byelaws. The communities affected by byelaws will benefit from potentially speedier action to tackle local issues and problems requiring byelaws and a more consistent approach to consultation before a decision is taken to introduce a byelaw. The Welsh Government will benefit from a marginal reduction in administrative work associated with the confirmation of byelaws.

Objectives

3.8. One of the primary policy objectives is to empower local authorities to take ownership for local laws which they are best placed to make. It will be a local authority's responsibility to make sure that it is acting within its powers and that byelaws are properly drafted and made. Local authorities will be required to consult groups which may be affected by the byelaw as well as their community where relevant at an early stage. This is in keeping with the local authority's community leadership role and increases awareness of their communities' needs. As is currently the case, any challenge to the legality of byelaws made under the alternative procedure will ultimately be a matter for the courts.

3.9. The consultation in 2010 confirmed that enforcement of byelaws has not been very effective in the past. An important policy objective of this legislation is to provide a more direct means of enforcement through the use of fixed penalty notices. An authority will also be able to determine fixed penalty notices as the preferred method of enforcement in respect of those byelaws listed in the Bill as subject to fixed penalty notice enforcement. Fixed penalty notices have been proven to be both an efficient method of enforcement for many minor offences and an effective means of changing behaviour. This is in contrast to the current situation where local authorities have indicated that byelaws are

generally not enforced because of the disproportionate time and effort involved in taking offenders to court.

3.10. Currently, nineteen of the twenty-two local authorities operate fixed penalty notice processes in respect of nuisance activity, such as litter, dog fouling, graffiti, fly-posting and noise. Therefore any additional costs to local authorities of adopting fixed penalty notices for this purpose are likely to be small.

3.11. Fixed penalty notices will also relieve pressure on Magistrates Courts and any funds generated will be available for local authorities to improve byelaw administration and enforcement. Returns collected every year by the Welsh Government show that a total of £116,075 was collected by Welsh Local Authorities in 2010-11 via fixed penalty notices for offences against environmental byelaws which includes littering.

3.12. The proposed Bill also seeks to ensure that, before a byelaw is made, the authority undertakes an initial consultation with those potentially affected in order to explore whether a byelaw is the most appropriate solution. This will result in a statement which scopes the problem, provides a summary of community views, the decision reached and the rationale for that decision.

Detailed implementation and delivery plan

3.13. The main elements of this legislation are on the face of the Bill. There is provision for the Welsh Ministers to issue statutory guidance to support implementation of the proposals. The Welsh Ministers intend to issue guidance to assist authorities in meeting the requirements of the Bill. Local authorities will be under a statutory duty to have regard to the guidance issued by the Welsh Ministers. The guidance, will for example, assist local authorities in seeking to undertake proper and effective consultation prior to a decision to make a byelaw, and on the use of fixed penalty notices.

Government Intervention

3.14. Byelaws are designed to regulate activities and behaviour that are deemed unacceptable to the extent that they warrant the creation of a criminal offence. Local authorities have indicated that often byelaws are not enforced due to the disproportionate time and effort involved in taking the offender to court. The introduction of a fixed penalty notice scheme, in respect of those byelaws listed in the Bill as subject to enforcement, seeks to provide a mechanism to address the feedback received regarding the current enforcement process for byelaws and as an effective method to restrain unacceptable behaviour.

Risks/hazards if legislation not made

3.15. A number local authorities have said that they are deterred from making new byelaws and updating outdated ones because of the disproportionate length of time it can take to secure confirmation by the Welsh Ministers. It is possible therefore in respect of certain byelaws which currently are required to

be confirmed that the reluctance due to the current procedure for making and confirming byelaws could give rise to potentially unregulated health and safety situations. Primary legislation is therefore required to amend the process and make it more straightforward to make byelaws in the future.

Sectors to operate more efficiently

3.16. The Bill will serve to provide for local authority byelaws to become a more effective regulatory mechanism. The alternative procedure should enable local authorities to respond more speedily to local issues and the Bill provides a more efficient means of enforcement. Byelaws may be aimed at individuals or groups of people. They may also be aimed at businesses such as markets, amusement premises, hackney carriage proprietors amongst others. All these target groups should operate more responsibly and with respect for other people in their communities as a result of byelaws that are relevant, up to date and consulted on.

Specific territorial extent

3.17. The Bill applies in relation to Wales.

4. Consultation

Who

4.1. Unitary authorities; national park authorities; community and town councils; Welsh Local Government Association; One Voice Wales were consulted from 21 June to 17 September 2010. The consultation paper invited ideas and views on how to improve and make less bureaucratic the procedures for making and confirming local authority byelaws in Wales. The paper also included proposals for fixed penalty notices to be the new form of enforcement where appropriate.

Why

4.2. The organisations above were consulted because they are all responsible for making byelaws and follow the procedures in section 236 of the Local Government Act 1972. The representative associations were also consulted because they have an interest in issues that affect the bodies they represent.

Summary of outcome

4.3. There was positive support for the simplification of the byelaw process by removing the need for confirmation by the Welsh Ministers, the encouragement of greater local ownership of the byelaw process as means of addressing local issues and for the introduction of fixed penalty notices as a new method of enforcement. The feedback received on other aspects of the process provided a detailed account of the capabilities of the individual sectors to make and enforce byelaws; their experience and assessment of the effectiveness of byelaws as a regulatory mechanism; the role of the Welsh Ministers and the Welsh Government and the perceived need for guidance and assistance. A detailed analysis of responses is at Appendix A.

Changes as a result of consultation

4.4. The response to the consultation supported the proposals that were made. The referendum in March 2011 gave the National Assembly full law making powers and, as a result, our aim is to produce a Bill which achieves simplification together with recasting and consolidating those parts of the current byelaws procedure that work well for Wales. The Bill will form part of the new Welsh Statute Book.

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (*affirmative, negative, no procedure*), if any, together with the reasons why it is considered appropriate;

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 5 (Revocation by Welsh Ministers)	Welsh Ministers	Order	Suitable for an order as provision relates to administrative action in relation to obsolete local byelaws.	Negative resolution procedure applies as the order making power seeks to repeal and tidy up obsolete byelaw.
Section 9 (Power to amend Part 1 of Schedule 1)	Welsh Ministers	Order	Suitable for an order as provision relates to adding or removing from the list of enactments under which byelaws are made in Part 1 of Schedule 1 to the Bill, which are not subject to confirmation by the Welsh Ministers.	Affirmative resolution procedure applies as the Order will amend this Act and may include supplementary amendments to other primary legislation.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 12(10) (Fixed Penalty Notices)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe a detailed form of fixed penalty notice, if required.	Negative resolution procedure applies as the Regulations relate to technical and administrative detail regarding the form of the fixed penalty notice pursuant to this section.
Section 12(13) (Persons giving fixed penalty notices)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe conditions to be satisfied before a community council can authorise a person to issue fixed penalty notices.	Negative resolution procedure applies as the Regulations relate to administrative detail in order to support the policy intention.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 13(3) (Amount of fixed penalty)	Welsh Ministers	Regulations	Suitable for regulations as the provision enables the Welsh Ministers to prescribe limits for fixed penalty notices to ensure consistency of approach.	Negative resolution procedure applies as these regulations seek to specify a fixed penalty notice amount to fall within a specified range and restrict the extent to which a legislating authority can specify different amounts in relation to different byelaws.
Section 13(5) (Default amount for fixed penalty)	Welsh Ministers	Order	Suitable for an order making power as it enables the Welsh Ministers to substitute a different default amount.	Affirmative resolution procedure applies as the Order will seek to amend this Act.
Section 16 (Power to amend Part 2 of Schedule 1)	Welsh Ministers	Order	Suitable for an order as provision relates to adding or removing from the list of enactments under which byelaws are made in Part 2 of the Schedule 1 to the Bill, which may be enforced through fixed penalty notices.	Affirmative resolution procedure applies as the Order will amend this Act and may include supplementary amendments to other primary legislation.

Section	Power conferred on	Form	Appropriateness	Procedure / reasons
Section 22 (Commencement of Act)	Welsh Ministers	Order	Suitable for an order making power as the provision relates to the coming into force date to be decided by the Welsh Ministers.	No procedure
Schedule 2, Paragraph 8(3) (Minor and Consequential Amendments – Wildlife and Countryside Act 1981)	Welsh Ministers	Regulations	Suitable for regulations as enables consequential provisions to be made in the future as a result of the modifications introduced by the Bill.	Negative resolution procedure applies as the regulations will seek to replace the existing regulations which were made pursuant to the negative procedure.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill and follows at Section 7.

6.2 A cost benefit assessment is included at Section 8.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

Impact and costs of Local Government (Byelaws) (Wales) Bill

Option 1 – Do nothing – Maintain the current byelaw making process

7.1 If we do nothing, the Welsh Government would not be able to deliver on one of the strands of the commitment made to reduce bureaucracy in “A Shared Responsibility”, local government policy statement in 2007.

7.2 Local authorities have criticised the current byelaw process because gaining confirmation from the Welsh Ministers can be a time consuming and laborious process. Additionally, byelaws can be difficult to enforce because action through the Magistrates Courts can be onerous and time consuming.

7.3 As a result, byelaws may not always be as effective a regulatory mechanism as they should be. It must be noted that there are certain instances such as for environment byelaws which can raise controversial issues and significant debate and employment of children byelaws where a national consistent approach is needed where confirmation of the Welsh Ministers will be retained.

Costs and benefits

7.4 The “do nothing” option would offer no benefits for local authorities, the public or Welsh Government. Wales would continue to operate the current procedure which is no longer deemed fit for purpose, given the revised capacity and expectations from local government since the Local Government Act was introduced in 1972.

7.5 The consultation in 2010 suggested that byelaws are hardly ever enforced and they only have nominal effect as a regulatory tool.

7.6 Unlike the current system, running costs are likely to reduce through the removal of the confirmation process and may be further offset by the revenue generated by fixed penalty notices. Please click on link below to see the revenue generated through fixed penalty notices issued as a result of the Clean Neighbourhoods and Environment Act 2005.

<http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/1011/?lang=en>

7.7 Although implementing fixed penalty notices may necessitate recruitment, resulting in some additional costs on local authorities, it may equally be possible to incorporate enforcement of byelaws within existing fixed penalty notice schemes, without significant additional cost or personnel. Local authorities have already shown that they have been using the fixed penalty regime responsibly under the Clean Neighbourhoods and Environment Act

2005. The positive way in which many local authorities have embraced this type of enforcement would no doubt have saved a significant amount of court time.

7.8 It must be stressed that fixed penalty notices should not be seen as a source of revenue generation but rather as a penalty which encourages behaviour change. The income generated should be used to facilitate compliance with the byelaw regime in general.

Option 2 – Introduce an Assembly Bill

7.9 Local authorities are granted power to make byelaws under various Acts of Parliament including the Local Government Act 1972. The only means of amending the byelaws process is to make changes to primary legislation, which would necessitate an Act of the Assembly. If doing nothing (Option 1) is discounted, introducing an Assembly Bill (Option 2) is the only remaining course of action.

7.10 Introducing a Bill would reduce bureaucracy for both local authorities and the Welsh Government and increase ownership of byelaws by local authorities. It would mean that authorities have greater control over the timescales needed to bring their byelaws in to force and ensure that they coincide with special requirements e.g. summer months, special events etc.

7.11 Consultation with interested parties at the initial stages of developing a byelaw (partly to ascertain that a byelaw is indeed the most appropriate course of action and partly to consult and be transparent) is currently encouraged as good practice and is one of the requirements that Welsh Government officials request evidence of during the confirmation process. The proposal would make this a statutory requirement which will be beneficial for local communities and special interest groups and ensure that their views and needs are taken into account.

7.12 The introduction of fixed penalty notices would facilitate an alternative means of enforcement of byelaws. There is already evidence of this from the fixed penalty notices being used by local authorities under the Clean Neighbourhoods and Environment Act 2005 for litter, dog fouling and fly tipping offences. The fines collected in respect of these offences are used to fund improvements within the entire spectrum of byelaws to implement behaviour changing measures and make the enforcement system more effective. Please click on the link below to see the latest fixed penalty notice figures which show that the number of notices issued during 2010-11 has increased from the previous year.

<http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/1011/?lang=en>

8. Costs & benefits

8.1 It is anticipated that the cost implications of the Bill are likely to be low given the small number, approximately 4 to 5, of byelaws currently confirmed by the Welsh Ministers each year. This view is further supported by the findings of the consultation exercise undertaken between 21 June 2010 and 17 September 2010. A monetary quantification of the cost implication is detailed below. An assessment of the potential 'winners' and 'losers', together with a description of the likely impact, can be found at Appendix B.

8.2 It should be noted that Regulatory Impact Assessments are required to consider the costs and benefits that are additional (i.e. incremental or marginal) to those that would have been incurred if no action were taken.

8.3 Any additional expenditure resulting from changes to the byelaw process would be met from current budgets with no extra charge against the Welsh Consolidation Fund.

OPTION 1: Do Nothing – Maintain the current byelaw process

COSTS

Transitional Costs (one off):

8.4 Under Option 1, current processes and practices will remain the same. There will therefore be no transitional costs.

Average Annual Costs (excluding one-off):

8.5 It is for local authorities to determine if, and when, it is appropriate to develop byelaws. Byelaws by their very nature deal with local issues across a diverse range of situations, such as nuisance behaviours, public baths, pleasure fairs etc. While the statutory process is the same, the issues to be considered and the extent of consultation and engagement with communities and stakeholders will differ and in that respect there is no such thing as a typical byelaw process.

8.6 Based on a recent byelaw a best estimate of the administrative cost to local authorities is £7000 - £9000 per byelaw. This related to the resource cost of drafting the byelaw, completing the consultation and press notices and submitting the byelaw to the Welsh Government for confirmation.

8.7 Based on a recent byelaw a best estimate of the cost to the Welsh Government is £1250 per byelaw. This relates to the cost of policy and legal resources to take the byelaw through the confirmation process.

8.8 Under Option 1, current processes and practises will remain the same, so there will be no additional costs.

BENEFITS

8.9 There are no additional benefits under Option 1. The process for submission and confirmation of byelaws will remain as present.

OPTION 2: Introduce an Assembly Bill

COSTS

Transitional Costs (one off):

8.10 Option 2 will involve minor transitional costs for the Welsh Government and potentially some transitional costs for local authorities.

- The Welsh Government will need to provide guidance to local authorities detailing the new process. The best estimate of this cost is £1000, which would fund the resources to review the existing guidance, revise and publish the updated guidance.
- The use of fixed penalty notices is optional. Local authorities wishing to enforce byelaws through this means will need to make appropriate arrangements. However, most authorities already have arrangements in place under the Clean Neighbourhoods and Environment Act 2005. It is anticipated that any additional costs would largely be limited to awareness training for existing staff and would not be significant. This would likely form part of ongoing training programmes and, as such, the best estimate of this cost is £500 per authority.

Average Annual Costs (excluding one-off):

8.11 Under Option 2, there would be a resource saving for both local authorities and the Welsh Government due to the removal of the confirmation process. Where Welsh Ministers' confirmation was not required, the Welsh Government would save the £1250 detailed under Option 1 with a commensurate saving in local authority costs.

8.12 Option 2 does place a statutory requirement upon authorities to consult stakeholders and assess impacts before new byelaws are made. Whilst consultation is merely recommended under the current process, in practise authorities are expected to demonstrate that there has been appropriate consultation before byelaws are confirmed by the Welsh Ministers. Option 2 effectively codifies current practise in this regard and there is no associated additional cost. The extent of consultation required in developing a byelaw will depend on factors such as the type of byelaw, the number of stakeholders and the scale of the issue being addressed. Based on the figures given at paragraph 8.6, the best estimate of consultation cost is £2,000-£3,000.

8.13 Option 2 also provides for a more efficient, but optional, means of enforcement through fixed penalty notices. It is estimated that the saving in cost of pursuing an offence against a byelaw through the Magistrates Court would be of the order of £500 – £1000.

BENEFITS

8.14 Under Option 2, both local authorities and the Welsh Government would realise benefits.

- The foremost benefit to local authorities would be the reduction in the time taken to introduce a byelaw. This would enable an authority to address local issues in an effective and timely manner, reduce bureaucracy and foster greater ownership of local laws.
- The removal of the confirmation process for non-controversial byelaws would release Welsh Government resources to work on other policy areas.
- The option of Fixed Penalty Notices would remove the need for local authority resources to prepare statements and prosecution files and release Magistrate Courts' time.

9. Competition Assessment

How the Bill affects business, charities and/or the voluntary sector.

9.1. It is not possible to apply the competition filter because data in relation to byelaw activity is sparse; the use and enforcement of changed byelaws is indeterminable; and there is insufficient detail to be able to determine how the changes may impact on business and competition and on charities and the voluntary sector. Many of the byelaw powers affect individuals rather than the sectors mentioned above.

9.2. It is possible that a significant proportion of byelaws created under the new powers would have occurred anyway under the existing system if it had not been changed. Thus the additional impact of the Bill provisions on business, charities and the voluntary sector may be marginal.

9.3. Taking a risk based approach, since safeguards are built into the Bill in terms of the requirement for statutory consultation at the outset of the byelaw making process by local government, it would seem unlikely that the new provisions will have a “significant detrimental effect on competition”.

10. Post implementation review

10.1. Although many byelaws will in future be made without the need for confirmation, there will still be byelaws, such as the environment and employment of children byelaws which will need the Welsh Minister's confirmation. This is because these byelaws can be controversial and have wider implications. Response to the consultation exercise in 2010 indicated that it was advisable to retain the Welsh Ministers' role in these cases. For this reason these byelaws will still need to be submitted to Welsh Government officials for scrutiny before they apply to Welsh Ministers for confirmation.

10.2. The Welsh Government Departments will continue to provide guidance and byelaw models to local government. The Democracy Ethics and Partnership Division as the lead Welsh Government Division will co-ordinate engagement with local government to obtain feedback on byelaws made and fixed penalty notices issued.

**Local Authority Byelaws in Wales – A Consultation Paper
Procedures for Making, Confirming and Enforcing byelaws**

Report on the responses to a consultation carried out from 21 June to 17 September 2010.

Introduction

1. The consultation paper stated the Assembly Government's intention to reform the byelaw procedure and outlined proposals for improving and make less bureaucratic the procedures for making and confirming local authority byelaws in Wales.
2. The paper also included proposals for fixed penalty notices to be the new form of enforcement for Wales.
3. The byelaws being considered were those for which procedures in section 236 of the Local Government Act applied.
4. The consultation document was issued to the 22 unitary authorities; the national park authorities; all 735 community and town councils
5. In all, there were 48 responses which comprised of 11 unitary authorities (50% response rate); 35 community and town councils (5% response rate); a consolidated response from the Welsh Association of National Park Authorities on behalf of the 3 National Park Authorities; 1 other. A list of all the respondents can be found at the end of this report.
6. A range of questions were asked not only to ascertain the views of respondents to a less bureaucratic process with more ownership given to local authorities (unitary authorities, national park authorities and community and town councils for the purposes of this consultation) but also to get feedback on how the process works currently.
7. The summary response has been presented in some detail and classified by each sector's response to the questions because feedback on byelaw making has not been gathered before and for this reason could be of interest and assistance to all those concerned.

Response to consultation

(Please see Annex A for summary of responses)

8. There was positive support for the simplification of the byelaw process and for the introduction of fixed penalty notices as a new method of enforcement.
9. The feedback received on other aspects of the process provided a detailed account of the capabilities of the individual sectors to make and enforce byelaws; their experience and assessment of the effectiveness of

byelaws as a regulatory mechanism; the role of the Welsh Ministers and the Welsh Assembly Government and the perceived need for guidance and assistance.

10. Respondents were asked to draw our attention to any powers that were not included in the table on pages 3 to 6 of the consultation document. We did not receive any additions or amendments.

Next steps

11. The views and comments expressed during this consultation exercise will be considered when we develop proposals to reform the byelaw procedure.

Annex A - Summary of consultation responses

Q1. How many byelaws has your authority made or amended in the past 5 years?

Just over half of the unitary authorities which responded had made or amended byelaws in the past 5 years.

National Park Authorities had not made or amended any byelaws in the past 5 year and neither had the community and town councils that responded.

Q2. In your experience, how effective are byelaws as a regulatory mechanism?

Unitary authorities:

There was a mixed response. Some respondents thought byelaws were effective and still had a role in local law enforcement and there were others who felt they were not effective. The comment that specific byelaws were more useful than others seemed to support the established role of byelaws as a local regulatory mechanism.

Many respondents cited the necessity for adequate resources to enforce byelaws as a determining factor for whether they were effective or not. There was also mention made of the value placed on byelaws by the police in preventing unacceptable behaviour and the police's powers to interview witnesses which helped in the enforcement of byelaws.

Two respondents stated that they found that primary legislation was preferred since it helped to ensure consistency in enforcement and greater transparency for residents and businesses.

National Park Authorities:

The collective experience was that byelaws possessed limited effectiveness. They involved an unwieldy process to obtain, and also to enforce.

Community and Town Councils:

Many councils expressed the view that byelaws were only effective if they were clearly known and enforced correctly and some gave examples of the difficulties in enforcement such as funding and resourcing constraints.

Q3. What are your views on the byelaw making and confirmation process as it operates currently?

Unitary Authorities:

Almost all respondents felt that the byelaw making and confirmation process was slow, bureaucratic and not user friendly. However one respondent did not view it as an obstacle or cause for delay and wondered why the Assembly Government was inviting challenges to the current process.

National Park Authorities:

The response was that the process was somewhat unwieldy and perhaps disproportionately consumed time, effort and expense.

Community and Town Councils:

The majority of respondents felt that the process was too long and bureaucratic. One respondent mentioned that it was not easy to find information or guidance on making byelaws and that there was no information on either the Assembly Government or the unitary authority websites.

A few respondents felt that it was important to continue the Assembly Government's involvement and one remarked that this would maintain cohesion and continuity.

Q4. Does the Welsh Ministers confirmation of byelaws add any value to the byelaws making process? If so how?

Unitary Authorities:

The majority stated that the process leading to the Welsh Ministers' confirmation did not add any value. It simply added another level of administration and caused delay.

Conversely, one respondent claimed that the Welsh Ministers' confirmation had value because byelaws imposed criminal sanctions and another respondent remarked that it was justified when controversial or complex byelaws were to be introduced.

National Park Authorities:

The response was that it added an important validating dimension – an additional check – as well as providing scrutiny for process, drafting, good

practice etc. At least it minimised the risk that a byelaw was rendered ineffectual through poor drafting.

Community and Town Councils:

Just over a third of community and town council respondents stated that it added value to the process. A variety of reasons were given including that it removed barriers and provided necessary scrutiny; provided checks and balances against poorly drafted byelaws; provided objectivity; adds status by becoming part of the Assembly Government law making process; endorsed the process being administered by the local authority; was vital to maintain the consistency of application of byelaws; ensured that they were the appropriate regulatory mechanism for the issues being addressed and that they complied with legislation. One said that the decision to make a byelaw should rest with the local authority. However, the Welsh Minister should be involved in a judicial role if there was an appeal process.

About one fifth of respondents did not agree that the Welsh Ministers' confirmation added value. One of these respondents stated that it only ensured that a byelaw followed the existing model byelaw and suggested that the "confirmation" may be replaced by making any variation from the model "ultra vires".

Q5. Are there any byelaws that you can identify where the Welsh Assembly Government's role should be retained? If so, why?

Unitary Authorities:

Most respondents said "no" and one respondent said that if a byelaw was made beyond the powers of the local authority, then there was a challenge process available through the courts.

The exceptions were byelaws which protected Sites of Special Scientific Interest (SSSIs) and involved other environmental considerations which frequently had a wider implication or effect other than at the local level; complex byelaws; or where there was a need for consistency as in employment of children byelaws.

National Park Authorities:

The views were mixed, ranging from none to a more general attitude that there was merit in the Assembly Government retaining its role in relation to all byelaws.

Community and Town Councils:

The majority of respondents were of the view that Assembly Government's role need not be retained. The exceptions quoted were that the Assembly Government had an important role where there was conflict with the local community as an adjudicator for disputes, and where a consistent national approach was needed as in byelaws relating to children.

There were some that felt the Assembly Government's role should be retained. The instances for community and town councils needing new byelaws were generally low and so it could still be worth retaining a check for all.

Q6. Would there be value in the Welsh Assembly Government continuing its role in providing guidance? If so how could current guidance on making byelaws be improved?

Unitary Authorities:

All agreed that Assembly Government guidance needed to be continued. The reasons given were that it simplified the adoption process; ensures consistency amongst the local authorities; supported the needs of community and town councils; helpful to be able to speak to officials about the interpretation of written guidance or model byelaws.

Improvements to the current process that were suggested included byelaw models and guidance to be adapted for Wales; needed to be kept up to date and available on the Assembly Government website; promote best practice and advice on preventing possible challenges to byelaws.

National Park Authorities

Assembly Government guidance was seen to provide an important function in promoting the consistency and quality of byelaws.

Community and Town Councils:

A mixed response. Some negative replies and "no answers". However just over half of respondents said there was value in maintaining the Assembly Government's guidance role. Some of the reasons given included that the Assembly Government provided a safeguard that byelaws were fair; it ensured the equality of implementation and creation of byelaws; the absence of Assembly Government guidance would mean that authorities and local councils would need to raise their own capacity adding significantly to costs and resulting in unnecessary duplication.

Some of the improvements suggested were that guidance could be issued via One Voice Wales, Society of Local Councils Clerks and Welsh Local Government Association and should include model byelaws; expectation of a quicker response from the Assembly Government; to be included in the training sessions for new councillors; to be posted on Assembly Government website; to be incorporated into the councillors' handbook.

Guidance in relation to disputes to proposals for byelaws and appeals was also requested.

Q7. Would some form of capacity building and information forum be of benefit? If so, what is the most effective vehicle for this?

Unitary Authorities:

The majority were in favour of some form of capacity building or information sharing though a couple of respondents felt that this would not be necessary. The suggestions included Welsh Local Government Association/One Voice Wales to co-ordinate more effective use of new byelaws on an all-Wales basis; the Association of Council Secretaries and Solicitors Wales (who was viewed as probably to have the most hands on experience of byelaw making) to complement the Assembly Government's guidance role; a web based facility to be hosted by the Assembly Government ; an internet portal to be set up by unitary authorities and community and town councils jointly (costs to be reimbursed by the Assembly Government).

National Park Authorities:

While the general principle of an information sharing forum was generally welcomed, more information would be required regarding this particular suggestion before it can be given the collective support of the national park authorities.

Community and Town Councils:

Many thought a forum or some type of capacity building was a good idea. Suggestions included regional road shows, seminars, networking opportunities; creation of a database with expert advice and support for various subject areas of law; work shops for community and town councils in each authority area or regional level; on-line information forum; through national bodies One Voice Wales and Society of Local Council Clerks; county council legal department and through the One Voice Wales training programme;

Q8. Should unitary authorities play some role in relation to byelaws made by community and town councils? If so, what should that role be?

Unitary authorities:

Acknowledgement was made of the probable lack of capacity at most community councils to make their own byelaws.

The comments from unitary authorities included: the likely resource implications for unitary authorities to be considered; should it become apparent that more than one community council in the authority area wished to make a similar byelaw, duplication may be avoided by the unitary authority making a byelaw for the entire area; should appeals against community council byelaws be directed to unitary authorities, this may seem inappropriate when appeals against unitary authorities are directed to the Assembly Government; unitary authority involvement would ensure uniformity and consistency.

National Park Authorities:

Wish to leave this for community and town councils to comment on.

Community and Town Councils:

Definite consensus on the need for unitary authority involvement. The reasons given by respondents included the higher level of expertise at unitary authority level due to dedicated legal departments and the ability to provide IT support. There was reference to a supervisory role. There were suggestions that unitary authorities should provide legal advice, guidance and vetting to ensure conformity and consistence.

Some respondents suggested that unitary authorities and community and town councils should work in partnership, co-operating towards a common interest and community councils should offer support to unitary authorities in consulting communities; provide intelligence on the differences between different types of communities e.g. urban and rural; and that resources should be shared in the enforcement of byelaws. Charters may be used as the basis for such collaboration and mutual support.

There were also those who commented that the current consultation process should continue and there were a couple of respondents who felt that unitary authorities should make the byelaws.

Q9. What consultation do you currently do before and during making the byelaw?

Unitary Authorities:

Unitary authorities stated that consultation processes and contact lists for consultees were in place e.g. the public, elected council representatives, community and town councils; local access forum; local businesses; special interest groups; police; trade bodies; citizens' forums; statutory authorities. The council website and web based consultation process were also mentioned.

National Park Authorities:

No byelaws have been made in past 5 years. Would seek to comply with government guidance when making byelaws.

Community and Town Councils:

No byelaws made within the past 5 years.

Q10. Does the process outlined above provide for appropriate consultation arrangements for local communities and interest groups? Are there any further measures which could usefully provide for consultation with local people?

Unitary Authorities:

Views ranged from “adequate arrangements” to suggestions for alternative arrangements. These included a formal requirement to hold public meetings for more rigorous local consultation; type of consultees to depend on the type of consultation e.g. Countryside Council for Wales for Sites of Special Scientific Interest (SSSIs) or Health Trusts for health and social services byelaws; compilation of a standard list of consultees i.e. local interest and community groups together with public authorities but also consider the need to include local residents.

Also mentioned was the use of the county / county borough council’s website for informing the public and providing on-line feedback.

National Park Authorities:

Commented that current guidelines are sufficient.

Community and Town Councils:

Not much response to this question – in line with response to question 9. A couple of suggestions made – the use of a community council forum and that interested groups are informed by direct contact.

Q11. Should byelaws continue to be advertised in local newspapers? Are there more effective means of advertising them?

Unitary Authorities

The majority were of the view that byelaws should continue to be advertised in local newspapers. The public still read public notices and such advertisements show that the unitary authority has tried to reach a wider audience.

However, due to the decline of readership over recent years other forms of media were suggested to supplement the local press – council’s own website; council’s free newspaper; local notice boards; directly liaising with specific groups that may be affected.

National Park Authorities

Responded that newspaper advertising represented objectivity and generally provided the greatest chance of reaching the largest number of people. However other (electronic) means should supplement this approach.

Community and town councils

Half agreed. No comment from about one third. Other forms of media suggested included public meetings, websites, local notice boards; minutes of meetings; community newsletters; direct methods of engagement as a result of research into the impact on specific groups;

Q12. Is there a case for a mechanism for referring disputed byelaw proposals to the Welsh Assembly Government if there are significant objections to a proposed byelaw?

Unitary authorities:

There was agreement that disputed byelaws should be referred to the Assembly Government, but only when and where there were significant objections. There was a view that it would not be desirable to unduly complicate or delay the process and that a system of written submissions may be best. One respondent commented that all byelaws should be dealt with by the unitary authority alone.

The view was also expressed that any mechanism which served to deter expensive challenges through the courts was welcome.

National Park Authorities:

Stated that there was a strong case for disputed byelaw proposals to be referred to the Assembly Government. It seemed a sensible option.

Community and town councils:

Over half agreed. Two respondents said disputes should be referred to the unitary authority.

Q13. Could other authorities or bodies or another part of the byelaw-making authority perform this role?

Unitary Authorities:

There was consensus in response that this was not a workable proposal and that it was best handled at the Assembly Government level to ensure consistency.

Diverse comments included the view that another authority would not be seen to be sufficiently independent to pass judgement on its peers; there were resource implications on authorities required to perform this role; a unitary authority should be able to hear an appeal against a community council; internal scrutiny within the unitary authority should be sufficient.

National Park Authorities:

No, not unless an absolutely independent body was established for this reason.

Community and town councils:

Mixed response. Some in favour of Assembly Government and others in favour of unitary authorities. Some stated that the Assembly Government should have the final say if a dispute could not be resolved. Others stated that it would not be appropriate for other authorities or another part of the byelaw making process to perform this role. Appeals should be dealt with by an independent body.

Q14. Should the means of enforcing byelaws be amended, so that they are no longer subject to action in the Magistrates Courts, but would instead be liable to fixed penalty notices?

Unitary Authorities:

Almost all respondents were in favour of this suggestion. Comments included that this would be a more effective and more easily understood means of enforcement and would ease the pressure on the court system; it seemed to work well in the enforcement of other legislation. There was a view that fixed penalties should be introduced as an addition to prosecution through the courts.

Attention was also drawn to the possible need for more resources to issue and enforce fixed penalties. The question of whether councils would be able to retain income from this source was raised.

National Park Authority:

Yes this would help and provide a public benefit.

Community and town councils:

Mixed response – well over half of respondents were in favour. But this was accompanied by cautionary comments such as concerns about the additional resources needed for fixed penalties to be effectively enforced including the problem of dealing with non payment of fines. Some wished to keep the option of using the Magistrate's Courts and there was a respondent who called for a wider debate on the proposals to include Police and Communities Together (PACT) members.

Q15. How can awareness of byelaws in force in open areas be made without adding to street clutter?

Unitary authorities:

All stated that some form of street signage was necessary to ensure that everyone in the community, including visitors to the area, was informed. This was an essential requirement if byelaws were to be successfully enforced. These signs could be made smaller and / or more attractive. They could be supplemented by publicity through council websites, newsletters, local newspapers, displays in public buildings etc.

National Park Authority:

This is an important issue for the National Park Authorities. The response of Pembrokeshire Coastal National Park Authority is quoted here: strongly of the view that displaying byelaws in full can be seriously detrimental, especially to high value landscapes and amenity land. They would welcome formal recognition that enforcement does not require that a byelaw be reproduced on site – clearly the full byelaws need to be accessible in some appropriate centralised place, and / or on websites but clarity that they do not need to be displayed for example at each of numerous access points would be very helpful. This should go hand in hand with a recognition that a unitary authority would not prosecute in circumstances where a person was simply unaware of the existence of a byelaw. Informing the public (perhaps referring to a portable notice presented by a Ranger / Warden etc) and the giving of an appropriate warning should in these circumstances be pre-requisites to formal enforcement.

However, there was another reason for the approach argued above. Greater awareness usually results from effective enforcement, not the position of a notice. So there needs to be sufficient resources in place to police byelaws once they are enacted.

Community and town councils:

Agreement that street signs and signs in open areas were unavoidable, but could be installed in such a way as to be in keeping with the surroundings together with good design and careful placement.

Additional communication methods suggested included newspapers with details of fines, notices in annual council tax demands, use of public notice boards, council websites, tourist visitor boards, village and community plans, notices in libraries, local awareness campaigns, leaflet drops and radio.

Q16. Should new byelaws include a timescale for review? What should the timescale be?

Unitary authority:

Most respondents were in agreement that there should be a timescale suggesting a period ranging from 12 months to 10 years. Attention was drawn to the resource capacity and finances needed to carry out these reviews and there was a view that timescales should be flexible. One respondent felt that would place an unnecessary burden on authorities at a time when cuts in funding were being imposed.

National Park Authorities:

Seems reasonable. Every 10 years perhaps. The process for review should not be as arduous as the process of establishing the byelaws in the first place.

Community and town councils:

Opinions ranged from 12 months to 10 years.

Q17. Are you in favour of simplifying the byelaw regime in a manner similar to that described in the consultation document?

Unitary Authorities:

About 90% of respondents were in favour of simplification in the manner described in the consultation document. Qualifying comments included the view that revision would not guarantee changes unless sufficient resources needed to enforce byelaws were in place. Controversial byelaws and those which have an impact outside the local area may still require some input from the Assembly Government.

National Park Authorities:

Yes, subject to previous comments in their response.

Community and Town Councils:

Almost three quarters of respondents were in favour.

Q18. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Unitary Authorities:

Two respondents commented - byelaws had a useful role to play in addressing local issues. However, the process for making, approving and enforcement needed to be more effective. Should the process be simplified and the need for confirmation removed, it was suggested that to ensure the validity, need and fitness for purpose of a byelaw, additional processes and checks and balances would have to be included in Assembly Government guidance.

National Park Authorities:

Pembrokeshire Coastal National Park Authority (PCNPA) have drawn attention to some practical issues regarding enforcement, in particular the desirability of unambiguous powers when investigating possible breaches of byelaws to require a person to give their correct name and address, and the provision of appropriate sanctions if they do not do so. Also suggested that a clear power to take photographs of offending activities and persons undertaking them would be extremely helpful.

List of respondents:

(those requesting confidentiality not included in list)

Unitary authorities:

- Blaenau Gwent
- Cardiff
- Caerphilly
- Conwy
- Denbighshire
- Flintshire
- Neath Port Talbot
- Swansea
- Torfaen
- Wrexham

National Park Authorities

Consolidated response from:

- Brecon Beacons National Park Authority
- Pembrokeshire Coast National Park Authority
- Snowdonia National Park Authority

Community and town councils

- Abergele Town Council
- Aber Valley Community Council
- Blackwood Town Council
- Caerphilly Town Council
- Cowbridge and Llanblethian Town Council
- Denbigh Town Council
- Henllanfallteg Community Council
- Henllys Community Council
- Hirwaen and Penderyn Community Council
- Holywell Town Council
- Llandyfaelog Community Council
- Llandysul Community Council
- Llandudno Town Council
- Llanelli Rural Community Council
- Llanelli Town Council
- Llandrino Community Council
- Llangattock Vibon Avel Community Council
- Llanwrtyd Wells Town Council
- Lledrod Community Council
- Lisvane Community Council
- Llŵchwr Town Council
- Maesteg Town Council
- Myddfai Community Council
- New Radnor Community Council

Community and town councils (continued)

- Northop Hall Community Council
- Overton Community Council
- Pembroke Dock Community Council
- Presteigne and Norton Town
- Rhuddian Town Council
- St Clears Town Council
- St Dogmaels Community Council
- Whitton Community Council

The following tables show who will be affected by the Bill proposals.

Table 1: Removal of requirement for Ministerial confirmation of byelaws

Winners	Likely Scale of Impact (High / Medium / Low)
Welsh Government Officials' time will be released to work on other policy areas.	Low Only about 8-10 officials currently involved very occasionally.
Local Authorities The time required to introduce a new byelaw will be reduced.	Low About 50 % of authorities that responded had not made any byelaws in the five years before the consultation exercise in 2010. National park authorities and community and town councils had not made any.
Losers	Likely Scale of Impact (High / Medium / Low)
Welsh Ministers Opportunity to input into the byelaw making process will be diminished.	Low
Local Authorities Will lose the scrutiny that Welsh Government officials provide.	Low With guidance provided by Welsh Government, local authorities will be able to take responsibility for this.

Table 2: Duty to Consult

Winners	Likely Scale of Impact (High / Medium / Low)
Stakeholders – includes communities and special interest groups There will be a duty placed on local authorities to consult them rather than the good practice recommendation currently.	High Although consultation is currently suggested as good practice, the duty to consult will ensure that all those who have an interest in the byelaw are consulted and their views taken into account.
Losers	Likely Scale of Impact (High / Medium / Low)
Local Authorities Local Authorities will have to incur the cost of a consultation exercise when introducing a new byelaw	Low. Consultation is currently recommended as good practice therefore the number of additional consultations (and associated costs) will be small.

Table 3: Power to introduce Fixed Penalty Notice (Fixed Penalty Notices) as a method of enforcement

Winners	Likely Scale of Impact (High / Medium / Low)
<p>Local Authorities Local Authorities will have an additional option for byelaw enforcement.</p>	<p>Low. Fixed penalty notices are optional so it will depend on each authority</p>
<p>Magistrates Courts Byelaws are normally enforced through the Magistrates Courts. Fixed penalty notices will therefore potentially reduce the number of cases heard freeing up time to hear other cases. However cases may still proceed in respect of non payment of fines.</p>	<p>Possibly medium. There is definite potential for fixed penalty notices to increasingly take the place of enforcement through the Magistrates Courts.</p>
Losers	Likely Scale of Impact (High / Medium / Low)
<p>Local Authorities Local Authorities will need to put systems in place for the collection of fines.</p>	<p>Low. There is no specific duty on Local Authorities to use fixed penalty notices. It is an option rather than a requirement.</p>

Local Government Byelaws (Wales) Bill

Annex 1 to the Explanatory Memorandum
incorporating the

Explanatory Notes

Introduction

1. These Explanatory Notes relate to the proposed Local Government Byelaws (Wales) Bill introduced into the National Assembly for Wales on 28 November 2011.

2. They have been prepared by the Welsh Government's Department for Local Government and Communities in order to assist the reader of the proposed Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by the National Assembly for Wales.

3. The Explanatory Notes should be read in conjunction with the proposed Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a section of the Bill does not seem to require any explanation or comment, none is given.

4. The powers to make the Bill are contained in Part 4 and paragraph 6 and 12 of schedule 7 to the Government of Wales Act 2006 ("GOWA 2006"). The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with such proposals by virtue of the subject which relates to powers and duties of local authorities and their members and officers under the heading of local government and by virtue of the subjects which relate to countryside and open spaces, nature conservation and sites of special scientific interest under the heading of environment.

5. The following terms are used in these Explanatory Notes:

- Legislating authority – to refer to a county borough council or county council in Wales, a community council, a National Park authority in Wales, the Countryside Council for Wales.
- The 1972 Act – the Local Government Act 1972.

Commentary on Sections

Introduction

6. A byelaw is a law which has been made by a legislating authority under a power conferred by statute. Currently byelaws in Wales must be confirmed by the Welsh Ministers (in some cases, this confirmation power is exercisable concurrently by the Secretary of State). Offences against byelaws attract a penalty fine, which is enforced through the Magistrates' Courts.

7. The proposed Bill gives effect to the Welsh Government's proposals to simplify procedures for making and enforcing byelaws made by a legislating authority. Proposals for changes to current procedures were set out in the Welsh Government's consultation paper *'Local Authority Byelaws in Wales: Procedures for making, confirming and enforcing byelaws'*, issued in June 2010.

8. In addition to the above, the proposed Bill disapplies existing provisions in sections 235 to 238 of the 1972 Act, insofar as they apply to Wales, and recasts those sections in the Bill (with some modification where appropriate).

This means the key legislative provisions relating to the making and enforcement of byelaws in Wales are accessible in the Bill.

9. The Bill provides for an alternative procedure for legislating authorities to follow in making byelaws. Where a legislating authority has consulted on, prepared and advertised draft byelaws locally, they can be enacted without confirmation by the Welsh Ministers. The Bill provides the Welsh Ministers with an order making power to amend the list of byelaws which do not require confirmation and to which the alternative procedure applies.

10. The Bill also provides for the enforcement of certain byelaws through fixed penalty notices, as an alternative to enforcement through Magistrates Courts. This will bring the enforcement of byelaws on to the same footing as the enforcement of other low-level nuisance activities, and will facilitate a more coordinated approach to the enforcement of such matters. The Bill provides the Welsh Ministers with an order making power to amend the list of byelaws that may be enforced by fixed penalty notices going forward.

11. The Welsh Ministers will have the power to issue guidance in relation to the new procedures, dealing in particular with consultation on, and the advertisement of, byelaws locally and the use of fixed penalties.

Powers to make byelaws

Section 1 – Overview

12. This provides an overview of the key provisions of the Bill and what the Bill seeks to achieve. The Bill has 21 sections and 2 schedules.

Section 2 – Byelaws for good rule and government and suppression of nuisances

13. This consolidates the provision of section 235 of the 1972 Act into the Bill. This enables county borough councils and county councils to make byelaws for the good rule and government of their areas and for the prevention and suppression of nuisances in their areas. Byelaws cannot be made under this section if provision for the purpose in question is made, or could be made, under another enactment. Byelaws under this power can, for example, prohibit skateboarding, ball games or touting in certain places where it causes a particular danger or nuisance, or can seek to regulate the manner in which those activities can be conducted.

Interpretation

Section 3 – Meaning of “legislating authority”

14. This defines the meaning of “legislating authority” in Wales for the purpose of the Bill. The definition includes other public bodies who have powers to make byelaws which are currently subject to confirmation by the Welsh Ministers, namely a National Park authority and the Countryside Council for Wales.

Revocation or amendment of byelaws

Section 4 – Revocation or amendment by a legislating authority

15. This recasts, in part, section 236B of the 1972 Act. It provides a power for a legislating authority to make a byelaw revoking or amending a byelaw it has previously made where, there exists no other power to do so. This will allow legislating authorities to remove obsolete byelaw provisions.

16. The power to revoke or amend a byelaw is subject to the same procedure as applied to the making of the byelaw.

Section 5 – Revocation by the Welsh Ministers

17. This recasts, in part, section 236B of the 1972 Act. It confers a power on the Welsh Ministers to make an order revoking a byelaw which they believe is obsolete. The intention behind this provision is that the power of the Welsh Ministers will only be used where the power to revoke the byelaw, or the identity of the authority which should otherwise revoke the byelaw, is unclear. By virtue of section 21, such an order is subject to the National Assembly for Wales negative resolution procedure as the order making power merely enables Ministers to revoke byelaws that are no longer relevant.

Procedure for byelaws

Section 6 – Byelaws not requiring confirmation

18. This section prescribes the alternative procedure for a legislating authority to make a byelaw which will not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority pursuant to any of the enactments specified in Part 1 of Schedule 1 to the Bill.

19. There are three stages to the procedure:

- Initial written statement and consultation with interested persons;
- Publication of decision and draft byelaws, if appropriate;
- Making and the coming into effect of byelaws.

20. Before making byelaws, a legislating authority must produce and publish an initial written statement which describes the issue which the legislating authority thinks may be addressed by making byelaws. The legislating authority must consult persons likely to be interested in, or affected by, the issue and, following consultation, to decide whether making byelaws is the most appropriate way forward. It is intended that guidance will emphasise that a legislating authority should keep an open mind as to whether a byelaw is the most appropriate way forward, prior to consultation.

21. The legislating authority must produce and publish a second written statement which contains the initial written statement, a summary of

consultation response, details of the decision reached following the conclusion of the consultation exercise and the rationale for that decision.

22. Where a legislating authority decides to make byelaws, it must give notice of its intention at least one month before the byelaws are made in one or more local newspapers circulating in the area to which the byelaws apply. The legislating authority must also publish this notice by placing it on the legislating authority's website, if a website is available. The legislating authority must also for one month prior to making byelaws publish the draft byelaws, place a copy on deposit at its principal office and ensure that a copy is open to public inspection. The byelaw must be made no later than 6 months after the date on which the legislating authority gave notice of its intention to do so.

23. The legislating authority is required to publish the initial written statement, second written statement, notice of intention to make the byelaw and the draft byelaw on its website.

24. A legislating authority may charge a reasonable fee for providing a copy of proposed draft byelaws to any person.

Section 7 – Byelaws requiring confirmation

25. This section replaces and modifies provisions in section 236 of the 1972 Act. It relates to those byelaws made by a legislating authority pursuant to any enactment which confers on the legislating authority powers to make byelaws where specific provision as to the procedure is not otherwise made. The section 236 procedure detailed in the 1972 Act is the common procedure for the making of byelaws which require confirmation.

26. There is a three stage procedure:

- Making of byelaws;
- Publication of intention to seek confirmation of byelaws;
- Confirmation and the coming into effect of byelaws.

27. The legislating authority must submit the byelaws it makes to the confirming authority. At least one month before a byelaw is submitted for confirmation, a legislating authority must give notice of its intention to do so in one or more local newspapers circulating in the area. The legislating authority must also publish its intention to do so and to deposit a copy of the bylaws at their offices and ensure a copy is open to public inspection.

28. The legislating authority is required to publish notice of intention to make the byelaw and the byelaw submitted for confirmation on its website.

29. A legislating authority may charge a reasonable fee for providing a copy of the byelaws to any person and must ensure that a copy of the byelaw is deposited at its principal office and is open to public inspection at all reasonable hours.

30. The confirming authority may refuse to confirm any byelaw submitted for confirmation. Byelaws do not have effect unless and until they are confirmed by the confirming authority.

31. Where no confirming authority is specified in the enactment under which the byelaws are made the confirmation functions of the Welsh Ministers are exercisable concurrently with the Secretary of State. It is intended that the Secretary of State would act as the confirming authority for any byelaws that may fall outside the legislative competence of the National Assembly for Wales.

Section 8 – Formalities, commencement and publication of byelaws

32. This section recasts the provisions in section 236 of the 1972 Act which will apply to both byelaws made subject to the confirmation procedure and byelaws made subject to the alternative procedure which do not require confirmation by the Welsh Ministers. This section applies to byelaws made by a legislating authority under any enactment which confers on the legislating authority the power to make byelaws. It should be noted that this the procedures described in the section only apply to the extent that specific provision as to the procedure is not otherwise made.

33. Byelaws are to be made under the common seal of the legislating authority, or signed by two members of a community council not having a seal.

34. Byelaws are to come into effect on the date fixed by the legislating authority or the confirming authority as appropriate to the procedure under which the byelaws are made. Where no date is fixed, byelaws will come into effect one month from having been made (under the section 6 procedure) or one month from confirmation (under the section 7 procedure), as appropriate.

35. The legislating authority which makes the byelaws must publish the byelaws on its website and deposit a copy at its principal office for public inspection. The requirement to “publish” includes by placing the appropriate documents on the authority’s website. A legislating authority may charge a reasonable fee for providing a copy of the byelaws to any person.

36. The proper officer of a legislating authority must send a copy of the byelaws made by the legislating authority to the proper officer of the council of every community to which the byelaws apply. For a National Park authority, the proper officer must send a copy of every byelaw once made, or where required once confirmed, to the proper officer of the council for every county borough or county or community in Wales whose area includes the whole or part of the National Park.

37. The proper officer of the community council must deposit the byelaws with the public documents of the community and ensure that a copy is open to public inspection.

38. For byelaws made by the Countryside Council for Wales the Countryside Council for Wales must ensure that a copy of a byelaw once made, or where required once confirmed, is sent to the proper officer of the council of every

county borough or county to whose area the byelaws applies and to the proper officer of the council of every community to whose area the byelaw applies.

39. This section provides that the “proper officer” is the officer duly authorised to serve that purpose by that body.

Section 9 – Power to amend Part 1 of Schedule 1

40. This provides a power for the Welsh Ministers, by order, to amend Part 1 of Schedule 1 (byelaws not requiring confirmation). In making any such order the Welsh Ministers may amend Part 1 of Schedule 1 by adding or subtracting from the list of enactments or by amending the type of authority that may make byelaws without confirmation. By virtue of section 21(3), such an order is subject to affirmative resolution by the National Assembly for Wales as the Order will amend this Act and may include consequential amendments to other primary legislation in accordance with the power in section 21(1).

41. Provision in section 21(1) to allows the Welsh Ministers to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider to be appropriate. In the case of an order under section 9 this provision can include provision to amending, repealing or revoking enactments.

Enforcement of byelaws

Section 10 - Offences against byelaws

42. This recasts section 237 of the 1972 Act, including the modifications made regarding the fine payable provided by the Criminal Justice Act 1982. Byelaws made by a legislating authority may provide that persons contravening such byelaws are liable on summary conviction to a fine. Such fine must not exceed the amount fixed by the relevant enactment or, if no sum is fixed, level 2 on the standard scale (currently £500). Similarly, the fine for conviction of a continuing offence is the amount fixed in the relevant enactment or £5 for each day during which the offence continues.

Section 11 – Section 2 byelaws; powers of seizure etc

43. This replicates section 237ZA of the 1972 Act, inserted by section 150(2) of the Police Reform and Social Responsibility Act 2011. It enables a county council or county borough council to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under section 2 (good rule and government and for the prevention and suppression of nuisances) and, upon conviction for non-compliance or contravention of any byelaw, provision for forfeiture of any such property.

Fixed Penalty Notices

Section 12 – Power to offer fixed penalties for offences against certain byelaws

44. This section enables a legislating authority to use fixed penalties as an alternative means of enforcing byelaws made under the enactments listed within Part 2 of schedule 1 to the Bill.

45. Where a byelaw is specified within Part 2 of the schedule 1 to the Bill, subsection (2) provides for an authorised officer of a legislating authority to issue a fixed penalty notice offering a person the opportunity of discharging liability for conviction for a byelaw offence by the payment of the amount specified in the fixed penalty notice. Subsection (3) makes the same provision for an authorised officer of a community council to issue fixed penalty notices in relation to offences against byelaws committed in its area, even if the byelaw was made by a legislating authority other than the community council.

46. Subsection (4) provides that a fixed penalty is payable to the legislating authority whose officer issued the notice.

47. Subsection (5) provides that, following receipt of a fixed penalty notice, the recipient has fourteen days in which to pay the specified fine, and thus avoid attending the Magistrates' Court in respect of the offence.

48. Subsection (6) provides that the fixed penalty notice must give sufficient information to the recipient so that the nature of the offence is clear.

49. Subsection (7) provides that a fixed penalty notice must also detail the period during which proceedings will not be taken for the offence, the amount of the fixed penalty and the person to whom and the address at which the fixed penalty may be paid.

50. Subsection (8) provides for the method of payment of the fixed penalty by way of pre-paying and posting a letter.

51. Subsection (9) details that where a letter is sent discharging payment the payment will be deemed to have been made at the time at which the letter would be delivered in the ordinary course of post.

52. Subsection (10) provides the Welsh Ministers with a regulation making power to specify the form of the fixed penalty notice issued pursuant to this section. These powers are subject to the National Assembly negative resolution procedure.

53. Subsection (11) provides that in the event of proceedings a certificate signed on behalf of the chief finance officer of an authority which states the payment of a fixed penalty having been received, or not, as the case may be will be deemed evidence of the facts stated.

54. Subsection (12) makes provision about which persons are authorised to issue fixed penalty notices. “Authorised officers” will be restricted to those authorised in writing by the legislating authority to carry out the function. This may be a direct employee of the legislating authority, or a person, or an employee of a person, with whom the legislating authority has a contract for the enforcement of byelaws.

55. Welsh Ministers are empowered to specify, by regulations, the form of such a notice and the conditions to be satisfied by a person before a community council may authorise them for the purpose of giving notices. This power is subject to the National Assembly negative resolution procedure.

Section 13 - Amount of fixed penalty

56. This section provides for the level of fixed penalties payable in respect of a breach of byelaws that may be specified by the legislating authority. The section confers on the Welsh Ministers the power to make regulations specifying a range within which the amount of fixed penalty must fall. The exercise of this power is subject to the National Assembly negative resolution procedure.

57. Where a range has been specified, a legislating authority may choose to set an amount within that range. Where no range has been set, a legislating authority will have the freedom to set the penalty. Where the legislating authority does not specify a penalty for breach of a byelaw, the section provides for a default amount of £75. This section empowers the Welsh Ministers to make an order to change the default amount as necessary, so that the level remains in line with similar low-level offences. The Welsh Ministers’ powers in this regard are subject to affirmative resolution by the National Assembly.

Section 14 – Power to require name and address in connection with fixed penalty

58. This section gives an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom the notice is issued to give their name and address. A person who fails without reasonable excuse to give their name and address or gives a false name and address will commit an offence and is liable on summary conviction to fine not exceeding level three on the standard scale (currently £1,000). The offence of failing to co-operate undermines the ability of a legislating authority to enforce the law and this offence is reflected in the level of the fine.

Section 15 – Use of fixed penalty receipts

59. This section requires a legislating authority, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money in combating nuisances for the prevention of which any byelaw has been made. This means that legislating authorities are required to consider whether fixed penalty receipts should be used generally in combating such nuisances. It would not be necessary for receipts to be used only towards combating the nuisance the relevant byelaw is concerned with.

Section 16 – Power to amend Part 2 of Schedule 1

60. This section provides that the Welsh Ministers may by order amend the list detailed at Part 2 of Schedule 1 to the Bill (byelaws in relation to which fixed penalties may be issued) by adding to or subtracting from the list of enactments or by amending the type of the authority that may offer fixed penalty notices. This order making power is subject to the National Assembly for Wales affirmative resolution procedure.

Section 17 – Community Support Officers etc

61. This section amends the Police Reform Act 2002 so that if a legislating authority and the chief police officer for the area agree, community support officers and other “accredited persons” under that Act may issue fixed penalty notices for breach of legislating authority byelaws. Before a community support officer or accredited person will be able to do this, the chief police officer is required to designate the community support officer or accredited person as having that function. In addition, the byelaw to which the fixed penalty notice relates is required to appear on a list agreed between the chief police officer and the legislating authority.

Miscellaneous and general

Section 18 – Guidance

62. This section gives the Welsh Ministers the power to issue statutory guidance in relation to the procedures for making byelaws, the enforcement of byelaws and anything related to these matters. Such related matters will include guidance on consulting on and publicising new byelaws, good practice in relation to byelaws and the use of fixed penalty notices. The legislating authority must have regard to the guidance issued when making or enforcing byelaws.

Section 19 – Evidence of byelaws

63. This section recasts section 238 of the 1972 Act. It makes provision for evidencing the existence of byelaws made by a legislating authority for byelaws made that are not subject to the confirmation procedure. A certified copy of a byelaw is deemed to be a printed copy of the byelaw that was made which is endorsed together with a certificate signed by the proper officer of a legislating authority.

64. The certified copy byelaw must state that the byelaw was made by the legislating authority, that it is a true copy of the made byelaw, the date upon which the byelaw was confirmed by the legislating authority named in the certificate, or not, as the case may be, and if sent to the confirming authority was not disallowed. In addition, the certified copy must state the date, if any, fixed by the confirming authority for the coming into effect of the byelaw.

65. This section provides that the production of a certified copy byelaw is deemed sufficient evidence of the facts stated in the certificate, unless otherwise proved.

66. A legislating authority would not be required to state within the certified copy the requirements detailed at subsection 19(2)(c) and (d) if the byelaw was not subject to confirmation after it was made.

Section 20 – Consequential amendments

67. This section gives effect to Schedule 2 which makes minor and consequential amendments to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act. Where byelaws are to be subject to the alternative procedure detailed in the list at Part 1 of schedule 1 to the Bill, any requirement for confirmation is to only apply in England.

68. Amendments are made which place on a legislating authority the duties that were formerly exercised by the Welsh Ministers acting as the confirming authority.

69. Amendments are also made to sections 235,236, 236B and section 238 of the 1972 Act to disapply these provisions in relation to Wales.

Section 21 - Orders and regulations

70. This section provides for a power to make regulations and orders under the Act to include power to make incidental, consequential, transitional or supplemental provision.

71. In the case of the powers to make orders under sections 9 and 16 (amendment of parts 1 and 2 of Schedule 1) the incidental, consequential, transitional or supplemental provision which may be made can include provision amending, repealing or revoking enactments.

72. Orders under sections 9 and 16, and any order under section 13(5), are made subject to the affirmative procedure as they seek to amend this Act and may make subsequent amendments to other primary legislation.

73. Other orders and regulations (apart from commencement orders) are subject to the negative procedure.

Section 22 – Commencement

74. This section provides for the Act to come into force in accordance with provision made by the Welsh Ministers by order.

Section 23 – Short title

75. This section provides that the short title of this Act is the Local Government Byelaws (Wales) Act 2012.

Schedule 1 – Lists of byelaw making powers

Sections 6 and 12

Part 1 – Byelaws not requiring confirmation

76. Part 1 of schedule 1 lists the enactments under which byelaws are made which are not subject to confirmation by the Welsh Ministers. It is provided that section 6 of the Bill will apply to byelaws made under the enactments and type of legislating authority listed in Part 1 of schedule 1.

Part 2 – Byelaws in relation to which fixed penalties may be issued

77. Part 2 of schedule 1 lists the enactments under which byelaws are made which may be discharged by fixed penalty notice. It is provided that section 12 of the Bill will apply to byelaws made under the enactments and type of legislating authority listed in Part 2 of schedule 1.

Schedule 2 – Minor and consequential amendments

Section 20

78. Schedule 2 lists the minor and consequential amendments made by the Bill to a number of enactments containing provisions relating to the making of byelaws subject to the confirmation procedure pursuant to section 236 of the 1972 Act.