

**National Assembly for Wales**  
Communities, Equality and  
Local Government Committee

Local Government Byelaws (Wales) Bill

Stage 1 Committee Report  
March 2012



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## **Communities, Equality and Local Government Committee**

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages; communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

### **Current Committee membership**



**Ann Jones (Chair)**  
Welsh Labour  
Vale of Clwyd



**Peter Black**  
Welsh Liberal Democrats  
South Wales West



**Janet Finch-Saunders**  
Welsh Conservatives  
Aberconwy



**Mike Hedges**  
Welsh Labour  
Swansea East



**Mark Isherwood**  
Welsh Conservatives  
North Wales



**Bethan Jenkins**  
Plaid Cymru  
South Wales West



**Gwyn R Price**  
Welsh Labour  
Islwyn



**Ken Skates**  
Welsh Labour  
Clwyd South



**Rhodri Glyn Thomas**  
Plaid Cymru  
Carmarthen East and Dinefwr



**Joyce Watson**  
Welsh Labour  
Mid and West Wales

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## **Summary of Conclusions and Recommendations**

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

The Committee notes an overwhelming majority of witnesses were in favour of the Bill and the need for the legislation. The Committee has noted the Minister's comments and welcomes the simplification of the byelaws process. The Committee agrees with the principles of the Bill and the need for legislation. (Page 13)

The Committee has considered all the evidence received in relation to section 2 and is content with the provisions detailed in this section. (Page 17)

The Committee is content with the provisions within section 3. (Page 18)

**Recommendation 1.** The Committee has considered the evidence in relation to sections 4 and 5. The Committee recommends that the Bill should be amended to include a duty to ensure relevant town and community councils are informed when a byelaw which affects them is to be revoked. (Page 22)

**Recommendation 2.** The Committee recommends that the Bill is amended to include a provision that legislating authorities should consult on a draft version of the proposed byelaw, at the same time they consult on the initial statement (section 6). (Page 30)

**Recommendation 3.** The Committee recommends that byelaws which will be subject to Ministerial confirmation should be subject to the same consultation provisions as byelaws which are not subject to Ministerial confirmation. (Page 30)

**Recommendation 4.** The Committee noted the Minister's assertion that timescales for consultation reflect the consultation timescales outlined in existing legislation. However, the Committee does not

believe this prevents new legislation having different timescales. Therefore, the Committee recommends that the minimum period of consultation (detailed under sections 6-7) should be increased from one month to six weeks to allow more time for town and community councils to respond to any consultation taking place.

(Page 30)

**Recommendation 5.** The Committee notes the concerns raised by town and community councils regarding their ability to make byelaws. The Committee is reassured by the Minister's assertion that town and community councils can work with local authorities to make byelaws, however the Committee believes this needs to be clarified on the face of the Bill. The Committee recommends amending section 8 to enable town and community councils to comply with its requirements by using the principal office of the county council within which it lies, and this matter should be further addressed by guidance produced by the Welsh Government.

(Page 30)

The Committee noted the evidence from the Minister and witnesses regarding the provisions under sections 10 and 11 of the Bill and are content.

(Page 34)

**Recommendation 6.** The Committee notes the evidence relating to the problems associated with fixed penalty notices. The Committee is pleased to note the Minister is liaising with Chief Constables in Wales, and recommends this continues, with a view to providing consistency on the role of PCSOs across Wales.

(Page 38)

**Recommendation 7.** The Committee recognises that sometimes using fixed penalty notices are a requirement, however, the Committee recommends that guidance issued by the Minister should clarify that fixed penalty notices should only be used as a last resort.

(Page 39)

The Committee has considered the evidence presented on Schedules 1 and 2 of the Bill and is content that at this stage National Parks should not be subject to the revised byelaw procedure.

(Page 45)

**Recommendation 8.** The Committee recommends the Minister consider the issue raised by the City and County of Swansea Council regarding the Tawe Barrage Act 1986, with a view to including this,



and any other relevant legislation, in Schedule 1 if appropriate.

(Page 45)

The Committee recognises the cost implications identified by town and community councils, but the Committee believes the Minister's assertion that town and community councils can work with local authorities should ease any financial burden on town and community councils implementing byelaws.

(Page 47)

# 1. Introduction

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1. On 28 November 2011, the Minister for Local Government and Communities, Carl Sargeant AM (“the Minister”), introduced the Local Government Byelaws (Wales) Bill<sup>1</sup> (“the Bill”) and made a statement<sup>2</sup> in plenary<sup>3</sup> the following day.

2. At its meeting on 22 November 2011, the National Assembly’s Business Committee agreed to refer the Bill to the Communities, Equality and Local Government Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 30 March 2012.

## *Terms of scrutiny*

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- i) the need for the Bill to deliver the stated objectives of:
  - empowering local authorities to take ownership for local laws;
  - providing a more direct means of enforcement through the use of fixed penalty notices;
- ii) whether the Bill achieves its stated objectives;
- iii) the key provisions set out in the Bill and whether they are appropriate to deliver the objectives;
- iv) potential barriers to the implementation of the key provisions and whether the Bill takes account of them
- v) whether there are any unintended consequences arising from the Bill

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<sup>1</sup> Local Government Byelaws (Wales) Bill, available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=227840&ds=11/2011>

<sup>2</sup> ROP, 29 November 2011, available at: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=227995&ds=11%2F2011#dat4> (NB: unless otherwise stated, subsequent references in this report to ROP refer to the proceedings of the Communities, Equality and Local Government Committee)

<sup>3</sup> A full meeting of the National Assembly for Wales

- vi) the views of stakeholders who will have to work with the new arrangements

*The Committee's approach*

4. The Committee issued a consultation and invited key stakeholders, to submit written evidence to inform the Committee's work. A list of the consultation responses are attached at page 50.
5. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions are attached at page 49.
6. The following report represents the conclusions and recommendations the Committee have reached based on the evidence received during the course of their work.
7. The Committee would like to thank all those who have contributed.

## 2. Background

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### *The National Assembly's legislative competence to make the Bill*

8. The National Assembly for Wales has the legislative competence to make provision for byelaws by virtue of Schedule 7, subject 12 of the Government of Wales Act 2006.

9. The National Assembly also has legislative competence to make provision for byelaws by National Park Authorities and the Countryside Council for Wales by virtue of Schedule 7, subject 6 of the Government of Wales Act 2006.

### *Explanatory Memorandum*

10. The Explanatory Memorandum<sup>4</sup> accompanying the Bill states that:

“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.”

11. The Explanatory Memorandum explains:

“The Bill introduces an alternative procedure for local authorities to follow in making a number of byelaws. The proposed Bill also provides an optional alternative, and more efficient, means of enforcement through fixed penalty notices”.

12. The Explanatory Memorandum states one of the primary objectives of the Bill 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 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.”

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<sup>4</sup> Welsh Government, Explanatory Memorandum, available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=227841&ds=11/2011>

13. The Explanatory Memorandum continues:

“An important policy objective of this legislation is to provide a more direct means of enforcement through the use of fixed penalty notices.”

### 3. General Principles and the need for legislation (Section 1)

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#### *Background*

14. The Bill attempts to give 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 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 Bill also provides an optional alternative means of enforcement through fixed penalty notices.

15. Section 1 provides an overview of the key provisions of the Bill and what the Bill seeks to achieve.

#### *Evidence from witnesses*

16. The majority of the evidence received supported the Bill.

17. One Voice Wales said they supported the principles encompassed in the Bill and they:

“particularly welcome the proposals for simplification of procedures for making and enforcing local authority byelaws and welcomes the proposal for an alternative, and more efficient, means of enforcement through fixed penalty notices.”<sup>5</sup>

18. The Welsh Local Government Association (WLGA) said:

“the Bill will streamline procedures, reduce administrative burdens and should potentially speed up the byelaw making process in Wales and will provide greater flexibility to local authorities in terms of enforcement.”<sup>6</sup>

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<sup>5</sup> Written Evidence LGB 1

<sup>6</sup> Written Evidence LGB 4

19. The National Parks<sup>7</sup> believed there was a need for a change from the current process. They said “making byelaws is unwieldy and disproportionately time-consuming”.<sup>8</sup>

20. Most of the town and community councils which responded were in favour of the Bill. However, Rhosddu Community Council believed there was no need for a Bill as there have been no community byelaws in 5 years.<sup>9</sup>

### *Evidence from the Minister*

21. The Minister said:

“The Bill fulfils our commitment to simplifying the process for making, amending and revoking byelaws in Wales by removing the need for confirmation from Welsh Ministers. The Bill also introduces a more effective and efficient means of enforcement through the option of fixed penalty notices.”<sup>10</sup>

### *Our View*

**The Committee notes an overwhelming majority of witnesses were in favour of the Bill and the need for the legislation. The Committee has noted the Minister’s comments and welcomes the simplification of the byelaws process. The Committee agrees with the principles of the Bill and the need for legislation.**

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<sup>7</sup> The Committee received written evidence from ‘National Parks Wales’ and ‘Snowdonia National Park’ and this differentiation is shown appropriately in the footnote references. However, it should be noted that oral evidence was provided by Iwan Jones of Snowdonia National Park but representing ‘National Parks Wales’

<sup>8</sup> ROP, paragraph 116, 9 February 2012

<sup>9</sup> Written Evidence LGB 29

<sup>10</sup> ROP, paragraph 7, 12 January 2012

## 4. Power to make Byelaws (Section 2)

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### *Background*

22. Section 2 enables county borough councils and county councils to make byelaws for the good rule and government and for the prevention and suppression of nuisances in their areas. By virtue of Part 1 of Schedule 1 to the Bill, byelaws made under this section will now not require confirmation by Welsh Ministers.

### *Evidence from witnesses*

23. Witnesses were asked whether they understood the phrase ‘good rule and government and suppression and prevention of nuisances’ in section 2 of the Bill.

24. The WLGA stated these phrases were “very well established in law via the Local Government Act 1972”.<sup>11</sup>

25. However, One Voice Wales said it would be appropriate to spell out the phrase in slightly more detail.<sup>12</sup>

26. Some concerns were also identified in respect of the provisions in section 2, regarding whether a byelaw would be subject to approval of ‘the executive’ or ‘full council’.

27. The WLGA said there should not be a requirement for every stage of the byelaw making process to go to full council. They believed clarity for local authorities could be provided by specifying on the face of the Bill whether the power to make byelaws applies to full council or the executive. The WLGA said:

“In the forthcoming Bill, it would be useful to have it specified that the power to make byelaws is for the full council, because you would be creating a new criminal offence or new legislation. Then, it [the Bill] should be specific about what the executive can do ... this would clarify matters for the councils that will have to implement this.”<sup>13</sup>

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<sup>11</sup> ROP, paragraph 13, 18 January 2012

<sup>12</sup> ROP, paragraph 82, 1 February 2012

<sup>13</sup> ROP, paragraph 18, 18 January 2012



28. The City and County of Swansea Council also believed the Bill should provide clarity, they said:

“The Council would request that the Bill makes clear whether the making of Byelaws is an executive or a Council matter. This will assist in ensuring the proper internal procedure is in place. In this respect, it would be helpful if the key stages in the making of a Byelaw which must go to Council for decision are set out in the Bill.”<sup>14</sup>

*Evidence from the Minister*

29. When asked about the definition of the phrase ‘good rule and government and suppression of nuisances’, the Minister said:

“the good rule element is an existing power from the Local Government Act 1972. No definition was provided in that Act, although that is not to say that it is right or wrong. However, it includes a clear understanding of what good rule and government is for local authorities that already deal with this...the rule can only be used in the governance of suppression or prevention of a nuisance.”<sup>15</sup>

30. The Minister continued:

“the process is not defined, and never has been. We believed that there is a common understanding across local authorities that use this rule”.<sup>16</sup>

31. A Welsh Government lawyer added that:

“By the nature of good rule and government for the prevention and suppression of nuisances, there is no definition...The onus is always on the local authority to exercise its powers reasonably in respect of byelaw making”.<sup>17</sup>

32. Members asked the Minister whether both the conditions of ‘good rule and government and suppression of nuisances’ needed to be met.

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<sup>14</sup> Written Evidence, LGB 30

<sup>15</sup> ROP, paragraph 34, 12 January 2012

<sup>16</sup> ROP, paragraph 53, 12 January 2012

<sup>17</sup> ROP, paragraph 45, 12 January 2012

The Minister indicated that these are not conditions in the Bill and that either applied.<sup>18</sup>

33. When asked if he would be taking steps to ensure that the powers granted to local councils would only be exercisable by full council, the Minister responded:

“that is already covered under regulation in the Local Government Act 2000, where it is stated that’s powers cannot be revoked by executive bodies if they are exercised by full council... if a council delegated the work of continuing with a byelaw to the executive, then my view is that that is right and proper.”<sup>19</sup>

34. When asked if making byelaws could be delegated to a council committee, and if so which committee, the Minister said:

“I do not have a view as to which committee this function should be delegated. It is for the local authority to designate.”<sup>20</sup>

35. The Minister provided clarification on the role of the full council and the executive in making byelaws in a subsequent letter to the committee. He said:

“The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (‘the regulations’), provide that the power to make, amend, revoke or re-enact a byelaw is not a power for which an authority’s executive is to be responsible. The effect of this is that a power is the responsibility of the authority. I take the view that the regulations sufficiently and appropriately provide for the full council to be engaged to a proportionate degree with regards to the key aspects of the byelaw process.”<sup>21</sup>

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<sup>18</sup> ROP, paragraph 13, 22, February 2012

<sup>19</sup> ROP, paragraph 19, 12 January 2012

<sup>20</sup> ROP, paragraph 18, 22 January 2012

<sup>21</sup> Letter from the Minister, 6 March 2012. Available at:

<http://www.senedd.assemblywales.org/mqIssueHistoryHome.aspx?Ild=2413>

*Our View*

**The Committee has considered all the evidence received in relation to section 2 and is content with the provisions detailed in this section.**

## 5. Interpretation (Section 3)

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### *Background*

36. Section 3 defines the meaning of ‘legislating authorities’. They are the Welsh county and county borough councils, community councils, National Park Authorities and the Countryside Council for Wales. The Bill will not apply to other bodies that have powers to make byelaws in Wales, such as charities and companies which also operate as businesses (e.g. harbour authorities, airport authorities and railway authorities).

### *Evidence from the Minister*

37. The Committee questioned the Minister why the Bill’s provisions only apply to the authorities listed in section 3 when there are other bodies in existence in Wales, such as private companies and charities that can make byelaws. The Minister responded:

“Our commitment was to create a local government bye-laws Bill, for local government, and to not go beyond that scope. That is why we have not included anybody else.”<sup>22</sup>

### *Our View*

**The Committee is content with the provisions within section 3.**

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<sup>22</sup> ROP, paragraph 65, 12 January 2012

## 6. Revocation or amendment of byelaws (Sections 4-5)

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### *Background*

38. Section 4 restates the general power of legislating authorities to make byelaws to revoke their own byelaws where no other specific power exists to do so. By virtue of Part 1 of Schedule 1, byelaws made in this way will not require confirmation by Welsh Ministers. The intention is that this will make it easier for authorities to revoke their own obsolete byelaws.

39. Section 5 provides an additional power for Welsh Ministers, by order, to revoke byelaws when they think those byelaws have become obsolete. The Explanatory Memorandum states that:

“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.”<sup>23</sup>

### *Evidence from witnesses*

40. Witnesses discussed the use of the word ‘*obsolete*’ in section 5 of the Bill.

41. One Voice Wales said it was “not entirely”<sup>24</sup> clear on what obsolete means.

42. However, the National Parks said:

“I looked up the word ‘obsolete’, and it is clear what it means, namely something that is no longer in use. So, I am perfectly happy with the use of the word”.<sup>25</sup>

43. Some witnesses believed the power under section 5 to revoke byelaws was unclear. The National Parks said:

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<sup>23</sup> Welsh Government, Explanatory Memorandum, page 42, paragraph 17

<sup>24</sup> ROP, paragraph 45, 1 February 2012

<sup>25</sup> ROP, paragraph 135, 9 February 2012

“The powers are for Welsh Ministers to revoke them [byelaws] provided they deem them to be obsolete ...The underlying intention is for these powers to be used only if it becomes apparent that there is uncertainty about who should revoke them, or if the body were no longer in existence. I cannot see that in the Bill.”<sup>26</sup>

44. The National Parks suggested changes should be made to the wording of the Bill to reflect this point.

45. The WLGA supported the right of Welsh Ministers to revoke byelaws (section 5), but agreed the power was unclear and required clarity. They stated:

“The rationale behind the powers in section 5 however is not included on the face of the Bill but is referred to in paragraph 17 of Annex 1 of the Explanatory Memorandum... It may therefore be beneficial to include this on the face of the Bill to provide clarity regarding the situations in which Welsh Ministers may seek to exercise the power.”<sup>27</sup>

46. When questioned, the WLGA considered that:

“It would be clearer if it [the Bill] could state that, where the role of legislating authority is unclear or challenged the Minister has a role. It is just for the purpose of clarity.”<sup>28</sup>

47. The WLGA also raised concerns about the lack of consultation when Welsh Ministers are revoking byelaws. They said:

“similar consultation provisions (as included for legislating authorities in section 6 and 7) should also apply to Welsh Ministerial powers of revocation, to ensure that ‘persons [*and authorities*] ...likely to be interested in, or affected by, the issue’ should be consulted prior to revocation.”<sup>29</sup>

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<sup>26</sup> ROP, paragraph 140, 9 February 2012

<sup>27</sup> Written Evidence, LGB 4

<sup>28</sup> ROP, paragraph 38, 18 January 2012

<sup>29</sup> Written Evidence, LGB 4

*Evidence from the Minister*

48. The Minister said that the meaning of ‘*obsolete*’ is clear. He added:

“obsolete “means ‘out of use’, ‘not current’ or ‘out of date’. That is how we have defined obsolete.”<sup>30</sup>

49. Section 5(1) of the Bill states:

“The Welsh Ministers may by order revoke any byelaw made by a legislating authority which they **think** is obsolete”<sup>31</sup>

50. When questioned, the Minister stated that the use of the word ‘think’ was “purely a drafting issue”. He added:

“... I think that ‘think’ is a reasonable word. It is used in Welsh Measures and Acts. However, if the committee suggests another suitable word, I am not opposed to using another ‘think’-type word.”<sup>32</sup>

51. When asked why the Minister had retained the default power to revoke obsolete byelaws, he responded:

“Where there is no ownership of the byelaw, it cannot be revoked. Therefore a council asks for a revocation of a byelaw it doesn’t own, it would have to come to ... a Welsh Minister. That is just a fallback position. We do not intend to use this power other than subject to application.”<sup>33</sup>

52. Referring to the consultation provisions under section 5 the Minister said:

“the consultation process is very difficult, given that there are cases in which we do not know who the owner is in the first place. It has to fit into the section, which is why we framed that purely as a fall-back position.”<sup>34</sup>

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<sup>30</sup> ROP, paragraph 84, 12 January 2012

<sup>31</sup> Section 5(1) of the Bill

<sup>32</sup> ROP, paragraph 26, 22 February 2012

<sup>33</sup> ROP, paragraph 87, 12 January 2012

<sup>34</sup> ROP, paragraph 32, 22 February 2012

*Our view*

**Recommendation 1: The Committee has considered the evidence in relation to sections 4 and 5. The Committee recommends that the Bill should be amended to include a duty to ensure relevant town and community councils are informed when a byelaw which affects them is to be revoked.**



## **7. Procedures for byelaws (Sections 6-9)**

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### *Background*

53. Section 6 establishes a new procedure for making certain byelaws that will not require the confirmation of Welsh Ministers. The new procedure for making these byelaws will entail three stages.

54. This new procedure will apply to any byelaws made by legislating authorities under the specific enactments set out in Part 1 of Schedule 1.

55. Section 7 details the process for making byelaws which will still need to be confirmed by Welsh Ministers. Section 7 restates and modifies the procedure for making those byelaws that need confirmation from Welsh Ministers. This procedure will apply to any byelaws made under any enactment other than those listed in Part 1 of Schedule 1.

56. Section 7 also contains provisions dealing with the identity of the confirming authority. This is to be either the authority specified in the enactment conferring the byelaw-making power or, if no authority is specified, the Welsh Ministers. Subsection (9) provides that where the Welsh Ministers are the confirming authority, their functions 'are to be exercisable concurrently with the Secretary of State'.

57. Section 8 deals with a number of technical matters relating to the formalities for making byelaws, the commencement of their provisions and their publication.

58. Section 9 allows Welsh Ministers, by order, to amend the list of specific byelaws that do not need Ministerial confirmation (ie Part 1 of Schedule 1).

### *Evidence from witnesses*

59. Regarding section 6 (Byelaws not requiring confirmation) One Voice Wales said:

“Concern has been raised ... that the removal of Ministerial confirmation will reduce the credibility of any byelaws

introduced at the very local level especially if they are controversial and could result in contestation”<sup>35</sup>

60. Carmarthenshire County Council also believed there were benefits to byelaws being confirmed by Welsh Ministers. They said:

“We are not entirely sure that removing the requirement for confirmation will be particularly beneficial, as we value the Welsh Ministers’ role in scrutinising new byelaws.”<sup>36</sup>

61. One Voice Wales referred to the Welsh Government consultation<sup>37</sup> undertaken prior to the introduction of the Bill, regarding individual town and community councils. One Voice Wales said:

“At that time, a few of them felt that the removal of Ministerial confirmation would undermine the status of implementation and credibility at local level. Having said that, it is not the view of the whole sector.”<sup>38</sup>

62. North Wales Association of Town and Larger Community Councils took a slightly different view, they stated:

“This is where the approval of the bye-laws, if not at ministerial level, then at unitary council level, is important ... There still needs to be a level of some sort above the town or community council to sign off bye-laws so that you avoid that situation.”<sup>39</sup>

63. However, the WLGA was content with the removal of Ministerial confirmation in relation to byelaws under section 6. They said:

“We like the fact that Ministerial approval is removed from the process. Local authorities are eminently capable of making their own byelaws.”<sup>40</sup>

64. The National Parks agreed that Ministerial confirmation should not be required and said “we should have the ability to proceed with byelaws without having ministerial consent”.<sup>41</sup>

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<sup>35</sup> Written Evidence, LGB 1

<sup>36</sup> Written Evidence, LGB 23

<sup>37</sup> Welsh Government, Explanatory Memorandum, section 4

<sup>38</sup> ROP, paragraph 48, 1 February 2012

<sup>39</sup> ROP, paragraph 38, 9 February 2012

<sup>40</sup> ROP, paragraph 8, 18 January 2012

65. The WLGA agreed that some byelaws should still require Ministerial confirmation (section 7), they said byelaws requiring Ministerial confirmation, “would be areas Welsh Ministers have a policy interest in and it is appropriate they have a role in that.”<sup>42</sup>

66. One Voice Wales believed the Minister should still confirm certain byelaws. They said:

“For any bye-law that relates to strategic matters or children, as referred to in the explanatory memorandum, I think that there is a recourse there for the Minister to have an overview of the process.”<sup>43</sup>

67. The issue of consulting on byelaws requiring Ministerial confirmation was raised by witnesses. The National Parks said “I think that you should still consult locally, even if it is a section 7 byelaw”.<sup>44</sup>

68. The WLGA believed whilst authorities would likely consult on byelaws requiring confirmation, it is not a statutory requirement. They said:

“The confirmation process is the current approach and authorities consult on the issues, but ... it is not a statutory requirement and it is not ... as detailed as this new process”<sup>45</sup>

69. The Committee also considered evidence on the consultation provisions relating to byelaws not requiring confirmation (sections 6 and 8).

70. Regarding consultation on the initial written statement, One Voice Wales said “getting consultation right at the outset was key”<sup>46</sup>, and they would welcome more detailed guidance on how any consultation is undertaken. They continued:

“Poor consultation at the outset could lead to poor bye-laws being drafted and, consequently, we could have contestation further down the line. It is about putting the effort upfront and

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<sup>41</sup> ROP, paragraph 131, 9 February 2012

<sup>42</sup> ROP, paragraph 79, 18 January 2012

<sup>43</sup> ROP, paragraph 74, 1 February 2012

<sup>44</sup> ROP, paragraph 168, 9 February 2012

<sup>45</sup> ROP, paragraph 82, 18 January 2012

<sup>46</sup> ROP, paragraph 62, 1 February 2012

doing the pre-consultation and consultation with wider stakeholder organisations, which would, hopefully, alleviate any further issues in terms of the final drafting.”<sup>47</sup>

71. One Voice Wales was particularly concerned about how the consultation requirements would impact on town and community councils. They said:

“a Welsh Government survey<sup>48</sup> in 2010 identified only one in ten community and town councils have a community engagement policy in place and none of these had a specific budget for community engagement”<sup>49</sup>

72. One Voice Wales added:

“It is about the guidance that supports the Bill. It states that you can consult via a website, but, back in 2010, 47% of our community and town councils did not have a website. Some of the language in the Bill is not applicable to the sector, because it does not have the IT resources to deliver on the content of the Bill.”<sup>50</sup>

73. One Voice Wales identified another concern for community and town councils and in particular smaller councils:

“There may not be a ‘principal office’ rather the clerk works from home and consequently there may be issues of accessibility. Again, guidance is needed to set out how this obstacle may be overcome.”<sup>51</sup>

74. Witnesses also raised queries regarding the consultation timescales detailed in the Bill. One Voice Wales stated:

“a month is a fairly short space of time if you have a community council that only had three or four hours of a clerk’s time at its

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<sup>47</sup> ROP, paragraph 62, 1 February 2012

<sup>48</sup> Welsh Government, Explanatory Memorandum, section 4

<sup>49</sup> Written Evidence, LGB 1

<sup>50</sup> ROP, paragraph 52, 1 February 2012

<sup>51</sup> Written Evidence, LGB 1

disposal. So, the timescale could be an issue for some community councils”.<sup>52</sup>

75. The WLGA thought consultation provisions were sufficient. However, they also believed there were issues to be explored “around timescales for laying and tabling of byelaws ... in terms of engagement with community councils.”<sup>53</sup>

76. The National Parks was not concerned by the consultation times prescribed in the Bill. They said:

“I know a month does not sound like an awfully long time, but you have to remember that it can be more than a month if the local authority thinks that it is a particularly complicated matter.”<sup>54</sup>

77. The WLGA were keen to clarify whether an authority’s own newspaper could be classed as a ‘local newspaper’ for the purposes of consulting, stating:

“In Swansea, our local newspaper has a very wide circulation, and, quite frankly, from the authority’s point of view, it is considerably less expensive to put it in there than in the *South Wales Evening Post*.”<sup>55</sup>

78. However, North Wales Association of Larger Town and Larger Community Councils said:

“The advert in the local newspaper is probably now the least effective method because we are now moving into a world of the internet”.<sup>56</sup>

### *Evidence from the Minister*

79. Regarding the removal of Ministerial confirmation for some byelaws, the Minister said that “the case for making byelaws is that

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<sup>52</sup> ROP, paragraph 69, 1 February 2012

<sup>53</sup> ROP, paragraph 59, 18 January 2012

<sup>54</sup> ROP, paragraph 149, 9 February 2012

<sup>55</sup> ROP, paragraph 67, 18 January 2012

<sup>56</sup> ROP, paragraph 32, 9 February 2012

generally the issues are very local issues. They are made by local authorities, which are best placed to make such decisions”.<sup>57</sup>

80. The Minister disagreed that Ministerial confirmation was still needed for some byelaws he said:

“By removing the requirement for confirmation by a Minister, we will remove a layer of bureaucracy...we think the risk is minimal. The risk being only a proper lack of scrutiny and consultation”.<sup>58</sup>

81. The Minister subsequently added that:

“The purpose [of the Bill] was to push that function [making byelaws] down to community councils and unitary authorities...I believe local determination is right’.<sup>59</sup>

82. Regarding the consulting on byelaws made under section 7, the Minister said:

“We believe that local consultation should happen; it is non-statutory, but we still believe that it is the right thing to do. Then, the decision on whether we proceed with the bye-law is very similar to the alternative procedure without confirmation. The authority will make the bye-law, and then it will be published and ready for inspection by interested parties. That process will be under scrutiny by the people affected by the bye-law, which will be submitted to the Welsh Minister for confirmation.”<sup>60</sup>

83. In relation to consultation taking place on the initial written statement the Minister said:

“There seems to be little or limited point in consulting after the byelaw has been created. It is really important that you get views beforehand on the subject of the byelaw being considered.”<sup>61</sup>

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<sup>57</sup> ROP, paragraph 102, 12 January 2012

<sup>58</sup> ROP, paragraph 15, 12 January 2012

<sup>59</sup> ROP, paragraph 39, 22 February 2012

<sup>60</sup> ROP, paragraph 144, 12 January 2012

<sup>61</sup> ROP, paragraph 111, 12 January 2012

84. When asked about the time frame for consultation, in his initial evidence session, the Minister said he would give some consideration to the time frame.<sup>62</sup>

85. Although in the final evidence session the Minister said:

“If you want me to be controversial on the small issue of the month for consultation, I will say this: if we are making bye-laws appropriately, at a town and community council or unitary authority level, or whatever, we have to grow up and come into the twenty-first century. If that means us having an interim meeting in a two week cycle to comply with some of the regulations, so be it. This is not a new number; that is what authorities deal with now. The committee may have a view on lengthening that period. However, we believe that a month is appropriate, and authorities—be they town and community councils or local authorities—can call for special meetings in order to deal with these issues. We have to come into the twenty-first century.”<sup>63</sup>

86. The Minister continued to explain the reasoning behind the minimum one month consultation period, stating:

“that period mirrors the requirements in the [Local Government] 1972 Act ... I do not support the argument that one month is the wrong timeline... authorities, be they town and community councils or local authorities, can call for special meetings in order to deal with these issues. We have to come into the twenty-first century.”<sup>64</sup>

87. In relation to whether a local authority could use its own newspaper for consulting, the Minister stated that guidance would:

“Stipulate to maximise the process for enabling people to be consulted, be that through newspapers or local authorities’ own newsletters.”<sup>65</sup>

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<sup>62</sup> ROP, paragraph 113, 12 January 2012

<sup>63</sup> ROP, paragraph 93, 22 February 2012

<sup>64</sup> ROP, paragraph 91, 22 February 2012

<sup>65</sup> ROP, paragraph 81, 22 February 2012

88. The Minister said he would “be happy to strengthen the guidance that we would issue, subject to the views of the committee”.<sup>66</sup>

89. In terms of the problems faced by town and community councils in meeting consultation requirements the Minister said “they could work in collaboration with the unitary authority...There are ways around this”.<sup>67</sup>

### *Our view*

**Recommendation 2: The Committee recommends that the Bill is amended to include a provision that legislating authorities should consult on a draft version of the proposed byelaw, at the same time they consult on the initial statement (section 6).**

**Recommendation 3: The Committee recommends that byelaws which will be subject to Ministerial confirmation should be subject to the same consultation provisions as byelaws which are not subject to Ministerial confirmation.**

**Recommendation 4: The Committee noted the Minister’s assertion that timescales for consultation reflect the consultation timescales outlined in existing legislation. However, the Committee does not believe this prevents new legislation having different timescales. Therefore, the Committee recommends that the minimum period of consultation (detailed under sections 6-7) should be increased from one month to six weeks to allow more time for town and community councils to respond to any consultation taking place.**

**Recommendation 5: The Committee notes the concerns raised by town and community councils regarding their ability to make byelaws. The Committee is reassured by the Minister’s assertion that town and community councils can work with local authorities to make byelaws, however the Committee believes this needs to be clarified on the face of the Bill. The Committee recommends amending section 8 to enable town and community councils to comply with its requirements by using the principal office of the**

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<sup>66</sup> ROP, paragraph 115, 12 January 2012

<sup>67</sup> ROP, paragraph 89, 22 February 2012



**county council within which it lies, and this matter should be further addressed by guidance produced by the Welsh Government.**

## 8. Enforcement of byelaws (Sections 10-11)

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### *Background*

90. Sections 10 and 11 relate to the enforcement of byelaws. Section 10 deals with ‘offences against byelaws’. The Explanatory Memorandum states that:

“Byelaws made by a legislating authority may provide that persons contravening such byelaws are liable on summary conviction to a fine.”<sup>68</sup>

91. The fine must not exceed the amount fixed by the relevant enactment or, if no sum is fixed, level 2 on the standard scale, which is currently £500.

92. Section 11, deals with ‘section 2 byelaws; powers of seizure etc’. It enables county council or county borough councils to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under section 2, and upon conviction for non-compliance or contravention of any byelaw, provision for forfeiture of any such property.

### *Evidence from witnesses*

93. Most witnesses welcomed the enhanced enforcement provisions in the Bill, but did raise concerns that putting them into practice may be difficult.

94. The WLGA welcomed the enhanced enforcement provisions, stating:

“All fixed penalties should help with enforcement. The problem is that the track record of enforcement around bye-laws is varied at best... It gives a legal sanction and a threat, but the enforcement is the key issue behind that.”<sup>69</sup>

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<sup>68</sup> Welsh Government, Explanatory Memorandum, Section 10

<sup>69</sup> ROP, paragraph 85, 18 January 2012

95. The WLGA were asked if it was reasonable for the maximum fine under section 10, to be set at £500, whereas under section 13, the maximum fixed penalty fine is £75. They said:

“It is line with the legislation, which is the Local Government Act 1972 .... It is the same level, which is level 2, and I imagine that it has been taken from that Act.... With regard to enforcement, I am sure that officers in all councils do not wish to prosecute or give a fixed penalty, but to try to encourage, persuade and ask nicely, if you like.”<sup>70</sup>

96. They went onto say:

“From our point of view, we would not want to see a situation where people’s property was seized on the back of this; that would only be used in the most extreme circumstances.”<sup>71</sup>

97. One Voice Wales, whilst welcoming the enforcement provisions, said:

“The provisions relating to enforcement are at face value workable however the availability of adequate resources to enforce byelaws will be the determining factor as to whether they will be utilised and if used whether they will be effective or not.”<sup>72</sup>

98. On the seizure proposals in section 11, One Voice Wales said:

“Given the potential conflict that could arise in relation to any seizure process and/or discharging of fixed penalty notices One Voice Wales would welcome guidance on each of these processes to ensure the health and safety of those administering the process is comprehensively addressed and that clear procedures are set down prescribing how each process is enacted by the legislating authority. It is not entirely clear however whether the powers relating to seizure are relevant to community and town councils.”<sup>73</sup>

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<sup>70</sup> ROP, paragraph 89, 18 January 2012

<sup>71</sup> ROP, paragraph 91, 18 January 2012

<sup>72</sup> Written Evidence, LGB 1

<sup>73</sup> Written Evidence, LGB 1

99. The North Wales Association of Town and Larger Community Councils were concerned that the practicalities of enforcing byelaws would be difficult, they said:

“Making them is the easy bit. Writing something down in an Act of Parliament is not too difficult. Enforcing it is a different animal altogether.”<sup>74</sup>

*Evidence from the Minister*

100. Regarding the level of fine detailed under section 10 the Minister said:

“We have not raised it. The provision in the Bill is derived from the Local Government Act 1972. The maximum fine is set by specific bye-law powers that enable legislation. The amount does not exceed level 2 on the standard scale. We do not believe that it is unreasonable.”<sup>75</sup>

101. The Minister stated that section 11, regarding powers of seizure, was a recasting of the Local Government Act 1972. He said:

“we are recasting what is in the 1972 Act—we have just lifted and moved across the provisions on power of seizure. It can only be exercised by county and county borough councils in relation to section 2, but again, it is not new—we have just moved that across.”<sup>76</sup>

*Our view*

**The Committee noted the evidence from the Minister and witnesses regarding the provisions under sections 10 and 11 of the Bill and are content.**

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<sup>74</sup> ROP, paragraph 55, 9 February 2012

<sup>75</sup> ROP, paragraph 70, 12 January 2012

<sup>76</sup> ROP, paragraph 111, 22 February 2012

## **9. Fixed Penalty Notices (Sections 12–17)**

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102. Sections 12 – 17 deal with fixed penalty notices.

103. Section 12 creates a fixed penalty notice regime as an alternative form of enforcing certain byelaws. The types of byelaws that may be subject to fixed penalty notices are listed in Part 2 of Schedule 1 to the Bill. Section 12 also sets out the necessary procedures for the issuing of such fixed penalty notices.

104. Section 13 states that, if no amount is specified by the legislating authority, the sum of the fixed penalty will be £75. Welsh Ministers may make regulations to limit the range of penalties that may be imposed. Welsh Ministers may also, by order, vary the default sum of £75.

105. Section 14 requires a person to whom an authorised officer wishes to give a fixed penalty notice to provide a name and address. It is a criminal offence to fail to do so, punishable by a fine not exceeding level 3 on the standard scale (£1,000).

106. Section 15 requires legislating authorities, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money to combat a nuisance for the prevention of which a byelaw was made. However, this need not necessarily be used towards combating the specific nuisance that the relevant byelaw is concerned with.

107. Section 16 allows Welsh Ministers to amend, by order, the lists of specific byelaws that may be subject to fixed penalty notices (ie Part 2 of Schedule 1).

108. Section 17 enables the power in relation to the imposition of fixed penalty notices to be exercised by community support officers, with the agreement of the legislating authority and the chief police officer for the area.

### *Evidence from witnesses*

109. Generally witnesses were content with the provisions relating to fixed penalty notices under sections 12-17. The WLGAs stated:

“The enforcement provisions, in particular the option to issue fixed penalties, are welcomed as they provide authorities with greater range of options with which to enforce byelaws.”<sup>77</sup>

110. Mold Town Council said:

“It also accepts that the alternative approach to enforcement, through fixed penalty notices, will be a more effective and efficient form of enforcement action rather than through the Magistrates Courts.”<sup>78</sup>

111. Whilst the City and County of Swansea Council welcomed fixed penalty notices, they believed the council would still have a problem with enforcement, because

“if someone who is suspected to be in breach of a Byelaw refuses to give their name or co-operate local authority officers have no powers of arrest or detention. It is due to this issue that Byelaws cannot be enforced on certain occasions. If it were possible to give local authority officers relevant powers in the Bill that would be a large help in enforcement.”<sup>79</sup>

112. The National Parks wished to “stress the desirability of the power to impose fixed penalties being extended to National Park Authorities in order to produce maximum public benefit”.<sup>80</sup>

113. One Voice Wales said they would not have the resources to put fixed penalty notices into place.<sup>81</sup>

114. North Wales Association of Town and Larger Community Councils believed “PCSOs (Police Community Support Officers) could if empowered, be able to help with the enforcement of byelaws. However, they do not have these powers given to them in all areas (Powys is one such case)”.<sup>82</sup>

115. North Wales Association of Town and Larger Community Councils also said in oral evidence:

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<sup>77</sup> Written Evidence, LGB 4

<sup>78</sup> Written Evidence, LGB 14

<sup>79</sup> Written Evidence, LGB 30

<sup>80</sup> Written Evidence, LGB 32

<sup>81</sup> Written Evidence, LGB 1

<sup>82</sup> Written Evidence, LGB 28

“the trouble is the Chief Constable decides which powers he will give the PCSOs in his area and which ones he will not. If we are going to have something like this we need the backing of the PCSOs.”<sup>83</sup>

116. Witnesses were content that the Minister may make regulations on the amount of fixed penalty notices. The WLGA said:

“If £75 is widely regarded, following implementation, as being too high, because people are not paying it, or too low in certain circumstances, because it is not acting as a deterrent, it is appropriate for the Minister to have that flexibility under this legislation to make regulations to change that amount.”<sup>84</sup>

117. Witnesses were also content with section 14, that if an authorised officer proposes to give a person a notice under section 12, the officer may require the person to give his or her name and address. Failure to do this could result in a level 3 fine on the standard scale a maximum of £1000.

118. The WLGA said:

“The intention behind this piece of legislation is to deal with people who obstruct officers in the course of their duties. The fine will be a matter for the court. It seems inconsistent, but, at the same time, there are circumstances, when you get to that level of obstruction, under which the threat of such a fine helps the system and facilitates the process.”<sup>85</sup>

#### *Evidence from the Minister*

119. The Committee asked the Minister about the concerns raised that enforcing byelaws through fixed penalty notices would be difficult for town and community councils. The Minister said:

“I recognise that, and again, I work with One Voice Wales to strengthen support for town and community councils across Wales, recognising that there are still some small councils that would probably find it difficult. I raised the point earlier about

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<sup>83</sup> ROP, paragraph 61, 9 February 2012

<sup>84</sup> ROP, paragraph 103, 18 January 2012

<sup>85</sup> ROP, paragraph 107, 18 January 2012

how they could—and I would expect them to—start working in collaboration with their primary unitary authority, so that they could help with some of these issues that they may wish to deal with under a bye-law. This is not an easy one, because, again, recognising that some of the town and community councils are very small, nevertheless a bye-law may be equally important to them as to as a unitary authority. It is just the way that, procedurally, they would deal with that.”<sup>86</sup>

120. In relation to the powers of seizure detailed under section 11, the Minister said:

“we are recasting what is in the [Local Government] 1972 Act—we have just lifted and moved across the provisions on power of seizure. It can only be exercised by county and county borough councils in relation to section 2, but again, it is not new—we have just moved that across.”<sup>87</sup>

121. When asked whether he was concerned about the differences in roles of PCSO’s across Wales, the Minister agreed he was concerned, stating:

“Yes, it does. I have raised this during my regular meetings with Wales’s chief constables. I am not concerned about the variety of powers that they have. The chief constables have made it clear what they believe their CSOs should or should not be doing. What concerns me is the complexity of there being the same or similar bye-laws in more than one authority, in an area that crosses a police boundary, and what would happen if the CSOs had different powers to enact them. I have asked the chief constables to look at the power of CSOs across Wales so that we can have some consistency.”<sup>88</sup>

### *Our View*

**Recommendation 6: The Committee notes the evidence relating to the problems associated with fixed penalty notices. The Committee is pleased to note the Minister is liaising with Chief**

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<sup>86</sup> ROP, paragraph 114, 22 February 2012

<sup>87</sup> ROP, paragraph 111, 22 February 2012

<sup>88</sup> ROP, paragraph 147, 22 February 2012



**Constables in Wales, and recommends this continues, with a view to providing consistency on the role of PCSOs across Wales.**

**Recommendation 7: The Committee recognises that sometimes using fixed penalty notices are a requirement; however, the Committee recommends that guidance issued by the Minister should clarify that fixed penalty notices should only be used as a last resort.**

## 10. Miscellaneous and General (section 18-23)

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### *Background*

122. Section 18 allows Welsh Ministers to issue statutory guidance to authorities regarding procedures relating to the making and enforcing of byelaws. The legislating authority ‘must have regard’ to the guidance when making or enforcing byelaws.

123. Section 19 makes provision for the use of certified copies as evidence of the existence of byelaws made by a legislating authority for byelaws made which are not subject to the confirmation procedure.

124. Section 20 gives effect to Schedule 2 which makes minor and consequential amendments to a number of enactments containing provisions relating to the making of byelaws.

125. Section 21 sets out the Assembly procedures that are to apply to any regulations and orders made by Welsh Ministers under the Bill.

126. Section 22 provides for the Act to be brought into force by a commencement order, while section 23 sets out the short title of the Act.

### *Evidence from witnesses*

127. The WLGA was content with the matters listed in section 18. They said:

“The matters seem appropriate. When the Welsh Government consulted on the policy in 2010, authorities generally welcomed the idea that there would be statutory guidance, particularly around the issue of model bye-laws, which are currently available, certainly in the English context. The Minister mentioned last week in evidence that model bye-laws would be used. So, we think that it is appropriate.”<sup>89</sup>

128. North Wales Association of Town and Larger Community Councils was also content with section 18, although they believed a provision

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<sup>89</sup> ROP, paragraph 120, 18 January 2012

for a guidance booklet with sample provisions could be detailed on the face of the Bill.<sup>90</sup>

129. The National Parks welcomed the guidance that would be provided by Welsh Ministers, they said:

“I welcome the fact that the Welsh Ministers will provide guidance, because one of the concerns raised by the national park authorities is that, if you remove the requirement for ministerial consent, you could have a fracturing of the quality in the bye-law making process. Hopefully, by having the guidance and a set of model bye-laws, the whole process will work seamlessly.”<sup>91</sup>

130. The Committee notes that the Constitutional Affairs Committee has reported on matters relating to Assembly procedures for regulations and orders.<sup>92</sup>

#### *Evidence from the Minister*

131. During the evidence sessions, the Minister confirmed that guidance would be provided, he said:

“we are more than happy to provide guidance and support around model bye-laws.”<sup>93</sup>

132. The Minister provided the Committee with more details on guidance and model byelaws.<sup>94</sup>

#### *Our view*

**The Committee is content with the provisions set out in sections 18 to 23.**

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<sup>90</sup> Written Evidence, LGB 28

<sup>91</sup> ROP, paragraph 174, 9 February 2012

<sup>92</sup> Constitutional and Legislative Affairs Committee Report on the Local Government Byelaws (Wales) Bill, is available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=231851&ds=3/2012>

<sup>93</sup> ROP, paragraph 109, 22 February 2012

<sup>94</sup> Additional Information from the Minister: Letter 1, available at: <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=2413>

## 11. Schedule 1 and 2

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### *Background*

133. Part 1 of Schedule 1 applies to section 6 and lists the enactments under which byelaws are made which are not subject to confirmation by Welsh Ministers.

134. Part 2 of Schedule 1 applies to section 12 and lists the enactments under which byelaws are made which may be discharged by fixed penalty notice.

135. Schedule 2 lists the minor and consequential amendments made by the Bill to a number of enactments containing provisions relating to making of byelaws.

### *Evidence from witnesses*

136. During evidence sessions it was noted that the enactments listed in Part 1 of Schedule 1 are not a comprehensive list. The WLGA said:

“The list in Part 1 of Schedule 1 seems fairly comprehensive, although it does not include everything, perhaps unsurprisingly. However, the Minister will have the power to change and amend that list.”<sup>95</sup>

137. The City and County of Swansea Council noted “the Bill does not contain in Part 1 of Schedule 1 every enactment under which the City and County of Swansea has made Byelaws.”<sup>96</sup>

138. The Council continued:

“A notable omission which relates to Swansea only is the Tawe Barrage Act 1986. The Cardiff Bar Barrage Act 1993 is included in Part 1 of Schedule 1 of the Bill and the Council would request that the Tawe Barrage Act is also included.”<sup>97</sup>

139. Evidence from the National Park Authorities expressed their desire for the National Park Authorities to be included as a legislating authority for the enactments listed in Part 1 of Schedule 1.

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<sup>95</sup> ROP, paragraph 71, 18 January 2012

<sup>96</sup> Written Evidence, LGB 30

<sup>97</sup> Written Evidence, LGB 30

140. The National Parks Authorities said the Bill was appropriate “except in so far as they fail, at present, to confer the full subject-matter of the reforms, from which County Councils will benefit, to National Park Authorities”.<sup>98</sup>

141. They continued, “it is considered desirable, to maximise public benefit, that the reforms are extended to National Park Authorities”.<sup>99</sup>

142. The WLGA agreed that the new procedure to make byelaws should include National Parks and asked ‘whether national parks legislation could be considered’, they said:

“One point that is important to highlight is that, subsequent to our submitting our written evidence, the national parks, which are associate members of the WLGA, asked whether national parks legislation could be considered as part of this. I understand that you might be inviting them to give evidence at a later date. They are included only as legislating authorities in this Bill—they have powers to revoke or amend existing byelaws, but not to create new ones. Also, the powers around explanatory notices do not apply to them; apparently it is dealt with in section 90 of the National Parks and Access to Countryside Act 1949.”<sup>100</sup>

#### *Evidence from the Minister*

143. Referring to the enactments not currently included in Part 1 of Schedule 1 the Minister said:

“I do not believe that lists are the appropriate approach. Part 1 clearly shows what is in, and if it is not in, it is out. That is pretty obvious to me. What I do not want to do is create a list that is limited, so that things outside the list could not be added at the appropriate time.”<sup>101</sup>

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<sup>98</sup> Written Evidence, LGB 32

<sup>99</sup> Written Evidence, LGB 32

<sup>100</sup> ROP, paragraph 11, 18 January 2012

<sup>101</sup> ROP, paragraph 63, 22 February 2012

144. Referring specifically to the request by the City and County of Swansea Council to include Tawe Barrage Act, the Minister said “I will give consideration to where that [Tawe Barrage Act] should be.”<sup>102</sup>

145. In a letter to the Committee dated 6 March 2012, the Minister confirmed:

“We will review the byelaw-making powers in these and other Local Acts which have been identified as a consequence of the Committee’s query to determine whether the ‘no confirmation’ procedure is appropriate.”<sup>103</sup>

146. When asked why National Parks were not included as a legislating authority under the enactments listed in Part 1 of Schedule 1. The Minister stated:

“there are elements of byelaws, for example ...national parks, that have national significance, and we would want consistency of decision-making processes on those ... they need ministerial confirmation, in order to have some sort of control around the decision making process.”<sup>104</sup>

147. The Minister also said “we believe that there are already provisions that are suitable for other organisations such as national park authorities”.<sup>105</sup>

148. The Ministers official clarified the Bill allowed the Minister to include National Parks at a later date, the Ministers official said:

“the Bill does provide Ministers with the power to add these [National Parks] to the alternative procedure at a later date if they think that is appropriate”.<sup>106</sup>

149. However, the Minister stated, “the whole reason for removing them [National Parks] from this process was that we recognised their

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<sup>102</sup> ROP, paragraph 72, 22 February 2012

<sup>103</sup> Additional Information from the Minister: Letter 2, available at: <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=2413>

<sup>104</sup> ROP, paragraph 46, 22 February 2012

<sup>105</sup> ROP, paragraph 52, 22 February 2012

<sup>106</sup> ROP, paragraph 52, 22 February 2012

significance and the controversy that surrounds them am not minded to change my mind on this.”<sup>107</sup>

### *Our View*

**The Committee has considered the evidence presented on Schedules 1 and 2 of the Bill and is content that at this stage National Parks should not be subject to the revised byelaw procedure.**

**Recommendation 8: The Committee recommends the Minister consider the issue raised by the City and County of Swansea Council regarding the Tawe Barrage Act 1986, with a view to including this, and any other relevant legislation, in Schedule 1 if appropriate.**

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<sup>107</sup> ROP, paragraph 120, 22 February 2012

## 12. Financial Implications

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### *Background*

150. There will be a statutory requirement on authorities to consult before making certain byelaws, which will incur a cost. The cost is estimated to be £2,000 to £3,000 per consultation.

### *Evidence from witnesses*

151. There was some concern from town and community councils regarding the costs associated with making byelaws. One Voice Wales said:

“given the costs associated with byelaws ... it will only be the larger town councils who are likely to have the resources ... to act on the Bill”.<sup>108</sup>

152. One Voice Wales continued “there are a number of cost, capacity and training issues”.<sup>109</sup>

153. Porthcawl Town Council also believed there were cost restrictions associated with the Bill, they said:

“the effectiveness of the proposals would be largely down to the personnel capacity, administration costs associated and the time factor as to whether Town and Community Councils would be able to manage the operation of local byelaws.”<sup>110</sup>

154. However, North Wales Association of Town and Larger Community Councils said they “did not think that cost should be a big issue”.<sup>111</sup>

155. The WLGA believed the cost estimates in the Explanatory Memorandum were satisfactory, stating:

“the financial estimates ...could be regarded as a realistic indication of the current costs for an average byelaw. In particular, the option for authorities to issue fixed penalties as an alternative to prosecution via Magistrates Courts could

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<sup>108</sup> Written Evidence, LGB 1

<sup>109</sup> Written Evidence, LGB 1

<sup>110</sup> Written Evidence, LGB 15

<sup>111</sup> ROP, paragraph 92, 9 February 2012



realise some financial savings ... it is unlikely however that this would be significant and would be offset by additional administrative, staff capacity and/or training requirements.”<sup>112</sup>

156. The National Park Authorities also believed costs would be marginal, Snowdonia National Park said:

“It is not anticipated that the Bill will have any significant financial implications”.<sup>113</sup>

#### *Evidence from the Minister*

157. When asked whether the additional requirement for consultation would offset any cost savings achieved by removing the requirement for Ministerial confirmation, the Minister said:

“I do not agree with that; I do not think that there is anything to support that evidence.”<sup>114</sup>

158. When questioned about the cost implications associated with making byelaws and training staff, the Minister said:

“I would be happy to look at that. I meet One Voice Wales regularly and it always asks me for additional funding for training.”<sup>115</sup>

159. The Minister continued:

“I am keen to support local authorities and local government in doing their job properly ... we are exploring how we support councils with their training provisions for new councillors, and we will be rolling that out after May. If there is anything that we can do to help the situation, at minimal cost or no cost, then I am always keen to explore that.”<sup>116</sup>

#### *Our View*

**The Committee recognises the cost implications identified by town and community councils, but the Committee believes the Minister’s**

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<sup>112</sup> Written Evidence, LGB 4

<sup>113</sup> Written Evidence, LGB 5

<sup>114</sup> ROP, paragraph 156, 22 February 2012

<sup>115</sup> ROP, paragraph 158, 22 February 2012

<sup>116</sup> ROP, paragraph 158, 22 February 2012

**assertion that town and community councils can work with local authorities should ease any financial burden on town and community councils implementing byelaws.**

## 13. Witnesses

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160. The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=1306>

*12 January 2012*

Carl Sargeant AM	Minister for Local Government and Communities
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*18 January 2012*

Steve Thomas	Welsh Local Government Association
Daniel Hurford	Welsh Local Government Association
Rod Jones	Welsh Local Government Association (City and County of Swansea Council)

*1 February 2012*

Lyn Cadwallader	One Voice Wales
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*9 February 2012*

Alan Guinn	North Wales Association of Town and Larger Community Councils
Robert Robinson	North Wales Association of Town and Larger Community Councils
Iwan Jones	Snowdonia National Parks

*22 February 2012*

Carl Sargeant AM	Minister for Local Government and Communities
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## 14. List of written evidence

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161. The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Id=2413>

<i>Name / Organisation</i>	<i>Reference</i>
One Voice Wales	LGB 1
Llangattock Vibon Avel Community Council	LGB 2
Cyngor Tref Criccieth Town Council	LGB 3
Welsh Local Government Association (WLGA)	LGB 4
Snowdonia National Park Authority	LGB 5
Association of Chief Police Officers Cymru (ACPO)	LGB 6
Menai Bridge Town Council	LGB 7
Councillor J Bishop LLM – Pontypridd Town Council	LGB 8
Connah’s Quay Town Council	LGB 9
Dinas Powys Community Council	LGB 10
Rhyl Town Council	LGB 11
Rhuddlan Town Council	LGB 12
Hennlys Community Council	LGB 13
Mold Town Council	LGB 14
Porthcawl Town Council	LGB 15
Llandough Community Council	LGB 16
Penarth Town Council	LGB 17
Cyngor Tref Llandudno Town Council	LGB 18
Cyngor Tref Abergele Town Council	LGB 19
Graig Community Council	LGB 20
Flintshire County Council	LGB 21
Denbigh Town Council	LGB 22
Carmarthenshire County Council	LGB 23

Magor with Undy Community Council	LGB 24
Haverfordwest Town Council	LGB 25
Gorseinon Town Council	LGB 26
Llandyfaelog Community Council	LGB 27
North Wales Association Of Town and Larger Community Councils	LGB 28
Rhosddu Community Council	LGB 29
City and County of Swansea Council	LGB 30
Countryside Council for Wales	LGB 31
National Parks for Wales	LGB 32