

Bill Summary
Local Government Byelaws
(Wales) Bill

January 2012

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Rhys Iorwerth

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Bill Summary - Local Government Byelaws (Wales) Bill

1. Introduction

Introduction date: 28 November 2011

Member in charge: Carl Sargeant AM, the Minister for Local Government and Communities

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equality and Local Government Committee

Stage 1 reporting deadline: 30 March 2012

Local authorities and certain other bodies have powers under primary legislation to make byelaws. Byelaws can be described as local laws designed to deal with local issues. At present, byelaws made in Wales must be approved by Welsh Ministers before they can be brought into force. Their revocation also needs the involvement of the Welsh Government. Offences against byelaws attract fines, which are currently enforced through the magistrates' courts.

The Welsh Government has stated that the intention of the *Local Government Byelaws (Wales) Bill* is to simplify and improve the way in which byelaws are used as a regulatory mechanism for local government in Wales. In particular, the Bill aims to:

- remove the need for certain byelaws to be confirmed by Welsh Ministers after authorities have made them;
- make it necessary for authorities to consult locally before making those byelaws;
- provide an optional alternative means of enforcing byelaws through fixed penalty notices; and
- consolidate in Wales the existing legislative provisions for making, confirming and enforcing byelaws previously contained in the *Local Government Act 1972*.¹

¹ [Local Government Act 1972](#) (Chapter 70) [accessed 5 January 2012]

2. Timeline

2.1. *Developments in England*

In **April 2006**, the then UK Government published a discussion document which invited comments on certain issues around the procedures for making and enforcing byelaws. This led to provisions being included in the *Local Government and Public Involvement in Health Act 2007*² which enable the Secretary of State to make regulations to establish a new procedure for the making of certain byelaws, and for prescribing classes of byelaws which may be enforced through fixed penalty notices. However, this power to make regulations would only apply to England, as the Act instead gave the National Assembly legislative competence regarding the procedure for making and enforcing byelaws (see section 2.2. below).

In **August 2008**, the Department for Communities and Local Government in England issued a consultation paper intended to inform the regulations to be made in England under the Act.³ The UK Government responded with proposals for regulations in **October 2009** but none were made before the 2010 general election.

In **August 2010**, the new UK Government revisited the issue and announced planned reforms whereby councils would be able to create certain byelaws or revoke old ones without seeking permission from the Government. Instead of seeking ministerial approval, councils would be required to consult with local residents based on an assessment of why a law should be created or cancelled. The UK Government's statement focused in particular on the review and revocation of outdated byelaws.⁴

A more detailed analysis of these developments in England can be found in the House of Commons library document, [Local Authority Byelaws](#). There have been no further developments, although the UK Government has recently said that it intends to move ahead with the proposals in due course.⁵

2.2. *Original Welsh Government commitment*

In **March 2007**, the Welsh Government published [A Shared Responsibility](#), which was its policy statement for local government in Wales. This document contained a commitment to “consider and consult on potential changes to simplify the

² [Local Government and Public Involvement in Health Act 2007](#) (Chapter 28) [accessed 6 January 2012]

³ Department for Communities and Local Government, [Communities in control: real people, real power - The making and enforcement of byelaws](#), 2008 [accessed 6 January 2012]

⁴ Department for Communities and Local Government, [Grant Shapps: Bypass Whitehall and scrap outdated byelaws](#), 31 August 2010 [accessed 6 January 2012]

⁵ HC Deb 27 April 2011 c459W

process for making local government bye-laws in Wales". The Welsh Government originally stated that this commitment would be delivered by **March 2008**.⁶

As noted above, the *Local Government and Public Involvement in Health Act 2007*⁷ had given the National Assembly legislative competence regarding the procedure for the making, the coming into force and the enforcement of byelaws.⁸ This power came into being on **30 December 2007**.

2.3. Welsh Government consultation

There were no major developments in Wales on these issues until **June 2010**, when the Welsh Government carried out a consultation in order to ascertain views on a simplified process for making, confirming and enforcing byelaws. The consultation document explained:

The cornerstone of this simplification is removing the requirement, in certain instances, for confirmation by the Welsh Ministers. This removal will give local authorities greater ownership over the whole process but will also mean that the assessment of need for a byelaw as well as the developmental process will need to be more transparent and inclusive.⁹

The consultation ran until **September 2010**. Questions covered included consultation arrangements prior to making byelaws, the Welsh Ministers' role in confirming byelaws, and alternatives to enforcing byelaws through the magistrates' courts (including a proposal for fixed penalty notices to be the new form of enforcement where appropriate). Eleven local authorities and 35 community and town councils responded. There was also a response on behalf of the three National Park Authorities, and one other response.

Some local authorities said that they already had consultation arrangements in place for making byelaws. As regards the Welsh Ministers' role in confirming byelaws, most respondents said that the process simply added another level of administration, caused delay and did not add any value. Generally, respondents agreed that the Welsh Government's role need not be retained, with one respondent saying that if a byelaw was made beyond the powers of the local authority, there was a challenge process available through the courts. Exceptions included byelaws which protected sites of special scientific interest, environmental byelaws, byelaws relating to children, and byelaws involving other controversial or complex issues.

⁶ Welsh Government, *A Shared Responsibility: Policy Statement on Local Government*, March 2007, p61 [accessed 6 January 2012]

⁷ *Local Government and Public Involvement in Health Act 2007* (Chapter 28) [accessed 6 January 2012]

⁸ Since Part 4 of the *Government of Wales Act 2006* is now in force, the legislative competence is to be found in subject 12 (local government) in Schedule 7 to the 2006 Act.

⁹ Welsh Government, *Consultation on local authority byelaws in Wales – Procedures for making, confirming and enforcing byelaws*, June 2010 [accessed 6 January 2012]

There was strong support for the enforcement of byelaws by fixed penalty notices as an addition to, rather than instead of, action through magistrates' courts. However, concerns over the need for additional resources in order to enforce penalty notices effectively were raised.

2.4. The Programme for Government

In **September 2011**, the Welsh Government announced its *[Programme for Government](#)* for 2011-2016. The Government stated that it would attempt to identify “ways of simplifying and reducing complexity in the delivery of public services, for example through the proposed *Local Government (Byelaws) (Wales) Bill*”.¹⁰

¹⁰ Welsh Government, *[Programme for Government](#)*, September 2011 [accessed 6 January 2012]

3. Policy objectives

Section 3 of the Bill's explanatory memorandum¹¹ states that the Bill is based on the following Welsh Government policy objectives:

- The current system of making, confirming and enforcing most byelaws is overly bureaucratic, outdated and cumbersome. As byelaws can still be an effective means of addressing local problems, this Bill is needed to make the procedures relating to byelaws less onerous.
- Local government is best placed to take responsibility for making the majority of byelaws, without the need for input from Welsh Ministers. In such cases, local consultation will now take place which means that Welsh Government scrutiny is replaced by local scrutiny. However, certain byelaws can be complex, controversial or could have a wider effect other than at the local level (such as byelaws relating to the employment of children or the environment). In such cases, the Welsh Ministers' confirmation role will be retained.
- Enforcement of byelaws has not been very effective in the past. Fixed penalty notices will be a more efficient and effective procedure than action through the magistrates' courts to enforce byelaws. However, this will be optional, and the magistrates' courts procedure will still be available.
- A number of local authorities are deterred from making byelaws and updating old ones because of the disproportionate length of time it can take to secure confirmation by Welsh Ministers. This could mean that there are unregulated health and safety issues going unresolved, and the Bill should change that by making it more straightforward to introduce byelaws in the future.
- Legislating authorities will benefit from this Bill as it introduces a less bureaucratic and more proportionate approach to making and enforcing certain byelaws. Communities will benefit from speedier action to tackle local issues and better consultation before decisions are taken. The Welsh Government will benefit from less administrative work associated with the confirmation of byelaws.

¹¹ Welsh Government, [Explanatory Memorandum to Local Government Byelaws \(Wales\) Bill](#), 28 November 2011, Section 3 [accessed 6 January 2012]

4. Summary of the Bill's provisions

The Bill's main provisions can be summarised as follows:

- It restates the power of local authorities to make byelaws for good rule and government and the prevention and suppression of nuisances (Section 2).
- It restates the powers of legislating authorities to revoke their own byelaws where there is no other power to do so (Section 4).
- It restates the powers of Welsh Ministers to revoke byelaws that appear to have become obsolete (Section 5).
- It details an alternative procedure for making certain byelaws that will not require the confirmation of Welsh Ministers (Section 6).
- It restates and modifies the procedure for making those byelaws that do need confirmation by Welsh Ministers (Section 7).
- It creates a fixed penalty notice regime as an alternative form of enforcing certain byelaws (setting out the enforcement framework by way of fines etc) (Section 12).
- It allows Welsh Ministers to amend the lists of specific byelaws that do not need ministerial confirmation and that may be subject to fixed penalty notices as listed in Schedule 1 (Sections 9 and 16).

Part 1 of Schedule 1 to the Bill lists the subject-matter of byelaws for which ministerial confirmation will not be required. Part 2 of Schedule 1 lists the subject-matter of byelaws for which fixed penalty notices may be issued.

- It allows Welsh Ministers to issue statutory guidance regarding procedures relating to the making and enforcing of byelaws (Section 18).

5. Financial implications

In the explanatory memorandum, the Welsh Government assesses the implications of introducing the Bill in terms of its costs and benefits.¹² It claims that:

- The number of byelaws introduced each year is not expected to change, despite the fact that the new system of introducing those byelaws is expected to be less onerous.
- There will be 'minor' transitional costs for the Welsh Government due to the need to produce statutory guidance, but that this is necessary because an element of scrutiny will be lost without ministerial confirmation. There will also be a resource saving for the Welsh Government due to the removal of the confirmation process.
- There will be a statutory requirement on local authorities to consult before making certain byelaws, which will incur a cost. However, this will merely codify current good practice which means that the impact will be minimal.
- The fixed penalty notices system will mean that local authorities will need to put systems in place to collect fines. This will incur costs but the impact will be low as it is merely an option and not a specific duty. Additionally, many local authorities already have such arrangements in place under environment legislation. Fixed penalty notices also remove the burden on local authorities of having to prepare material for prosecution cases, and would release magistrates' courts' times.

¹² Welsh Government, [*Explanatory Memorandum to Local Government Byelaws \(Wales\) Bill*](#), 28 November 2011, Section 8 [accessed 6 January 2012]