



WLGA Response

9th January 2012

National Assembly for Wales' Communities, Equality and Local Government Committee Consultation

WLGA • CLILC

Local Government Byelaws (Wales) Bill

Introduction

1. The WLGA welcomes the introduction of the Local Government Byelaws (Wales) Bill.
2. The Bill will streamline and simplify the Byelaws making process in Wales and provides greater discretion to local authorities in making and enforcing byelaws.
3. Due to the timescale of the Committee's consultation, the following response has been produced in advance of many local authorities' own consultation responses, and whilst it has sought to reflect and take into account authorities' views, it should be read together with authorities' responses submitted by the final consultation deadline.

Consultation Questions

Q1. Is there a need for a Bill to revise and consolidate legislation about the making and enforcement of byelaws? Please explain your answer to this question.

4. This question can be interpreted and therefore answered in two ways:
5. First, is there a need to reform the procedures for the making of byelaws? The Explanatory Memorandum clearly articulates the Welsh Government's policy for reforming byelaws which is based on evidence gathered from local authorities and others through prior consultation. The broad view from local government is that the present byelaw procedures (underpinned by the current legislative framework) are cumbersome and require streamlining and that enforcement could be made more effective with additional powers such as the issuing of fixed penalty notices.

6. Secondly therefore, in order to introduce the Welsh Government's policy intentions regarding reform of byelaws in Wales, legislation is required as the proposals could only be implemented through the amendment of existing legislation.
7. The Byelaws Bill however goes further and also usefully recasts and consolidates the broad range of existing legislation which currently relate to byelaws in Wales.

Q2. Do you think the Bill 'will serve to provide for local authority [and some environmental] byelaws to become a more effective regulatory mechanism' (as stated in paragraph 3.16 of the Explanatory Memorandum)?

8. There are mixed views regarding the regulatory effectiveness of the existing byelaw regime, largely due to the options currently available to authorities to enforce byelaws. As the Explanatory Memorandum (paragraphs 7.2 - 7.3) notes "...byelaws can be difficult to enforce because action through the Magistrates Courts can be onerous and time consuming...As a result, byelaws may not always be as effective a regulatory mechanism as they should be."
9. However, the proposals within the Bill to enable authorities to more readily issue fixed penalty notices should improve the regulatory impact of byelaws. The Bill provides flexibility as it also provides an option for authorities to continue to take matters to the Magistrates Court where appropriate.

Q3. Are the sections of the Bill appropriate in terms of reforming existing laws relating to byelaws? If not, how does the Bill need to change?

10. The Bill's sections appear appropriate in terms of consolidating and amending existing byelaw legislation.

Q4. (a) How will the Bill change the current approach to byelaws and what impact will such changes have, if any?

11. 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.
12. The Explanatory Memorandum suggests that only 4-5 new byelaws are made in Wales each year and the Welsh Government does not anticipate that this figure will necessarily increase as a result of the Bill. Although it is not anticipated that the number of new byelaws made will increase

significantly, given the streamlining of the byelaw procedures, the Bill may encourage authorities to consider amending or revoking historical or obsolete byelaws where relevant where the current procedure may be regarded as a disproportionate deterrent. The proposed flexibility around regulation may also allow authorities to more effectively enforce byelaws in the future.

Q4 (b) In particular, does the Bill achieve its aim of seeking to streamline the procedures for making byelaws (primarily by removing the requirement for confirmation by the Welsh Ministers of specified new byelaws)?

13. The removal of the requirement of confirmation by Welsh Ministers will streamline the procedures for making byelaws. Consultation feedback from local authorities suggested that the current process with confirmation by Welsh Ministers of specified new byelaws added no significant value, but added delays and additional administrative burden for both authorities and the Welsh Government.

Q5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

14. There are no specific barriers to implementing the provisions of the Bill as the provisions provide greater local discretion and flexibility in how authorities might make or enforce byelaws.
15. There are potential financial consequences in making and enforcing byelaws, given the need in particular to consult effectively. Therefore, when considering making, amending or revoking byelaws, financial impact and proportionality will remain key considerations. Similarly, a wider use of fixed penalty notices may have an impact in terms of training and support for relevant officers and may have implications in terms of officer capacity. However, given this is a discretionary power, authorities would need to consider the financial and staffing implications when making and, subsequently, enforcing byelaws.

Q6. What are your views on the procedures for making byelaws (sections 6 to 9)?

16. The proposed procedures for making a byelaw are appropriate and proportionate.

Q7. Are the consultation provisions outlined in the Bill satisfactory in terms of ensuring appropriate consultation takes place prior to revoking, amending, making or confirming byelaws (sections 4 to 8)?

17. The consultation provisions for local authorities making a byelaw are appropriate and proportionate. Under Section 6 (5)a and Section 7 (4)a it may be appropriate for the Bill to clarify that 'one or more local newspapers circulating in the area to which the byelaw is to apply' could include an authority's own newspaper/newsletter where produced. This would reduce costs to the council and would also achieve a wider circulation than adverts placed in paid for local newspapers.
18. Section 5 'Revocation by the Welsh Ministers' permits Welsh Ministers to 'revoke any byelaw made by a legislating authority which they think is obsolete'. Similar consultation provisions (as included for 'legislating authorities' in Sections 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.

Q8. (a) Are you content with the enforcement provisions in the Bill (sections 10 to 15)?

19. 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.

Q8 (b) In particular, do you have any observations on the seizure proposals in section 11, and the penalties proposed in sections 10(2) and 14(3)?

20. The proposals in Section 10(2), 11 and 14(3) are appropriate.

Financial Implications

Q9. What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

21. Byelaws inevitably vary in terms of their scope, geographical coverage and the potential scale of contravention and/or enforcement. It is therefore difficult to provide an exact figure for the potential financial impact of the proposed byelaw making and enforcement procedures as outlined in the Bill.
22. However, the financial estimates as outlined in the Explanatory Memorandum (paragraphs 8.4-8.13) 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 realise some financial savings. Whilst fixed penalty notices are primarily designed as a deterrent, inevitably, if fixed penalties are issued and paid, they will provide some revenue to an authority. It is unlikely however that this would be significant and would be offset by additional administrative, staff capacity and/or training requirements.

Q10. Are there any other comments you wish to make about specific sections of the Bill?

23. Section 2 regarding powers to make 'Byelaws for good rule and government and suppression of nuisances' recasts and therefore uses much of the same terminology as Section 235 of the Local Government Act 1972. Both the 1972 Act and the Bill therefore refer to the powers to make byelaws applying to 'county borough councils' and 'county councils'. It would provide clarity however, given the provisions of the Local Government Act 2000, if the Bill could specify whether the proposed powers to make byelaws are functions of the Executive or the full Council.
24. Section 5 'Revocation by the Welsh Ministers' permits Welsh Ministers to 'revoke any byelaw made by a legislating authority which they think is obsolete'. 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; this power would only be used 'where the power to revoke the byelaw, or the identity of the authority which should otherwise revoke the byelaw, is unclear'. 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.
25. There is a requirement to have regard to Welsh Minister's Guidance (Section 18). It would be helpful to state whether this guidance would include regard to the format of Model forms of byelaw published by Welsh Ministers. Consultation feedback from authorities indicates that model byelaws would be welcomed and would support consistency across Wales.

Subordinate Legislation

Q11. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e statutory instruments including regulations and orders)?

26. It is appropriate that Welsh Ministers have powers to make subordinate legislation regarding byelaws. It is important that the list of subject matters of byelaws (Schedule 1) should be kept up-to-date, with new subject matters added or obsolete matters removed as a matter of course. Subordinate legislation would therefore appear to be the most proportionate and timely method of amending future byelaw legislation.

Q12. Do you have any observations on whether the subjects referred to in the Schedules are, in fact, appropriate to be regulated by byelaws?

27. The subjects referred to in the Schedules are appropriate to be regulated by byelaws. Ministerial powers to make subordinate legislation should ensure that the matters included within the Schedules can be reviewed and amended when appropriate.