

Local Government Byelaws (Wales) Bill

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One Voice Wales Response to the Local Government Byelaws (Wales) Bill

9 January 2012

One Voice Wales is recognised by the Welsh Assembly Government as the national representative body for community and town councils in Wales. It represents the sector on the Local Government Partnership Council and over 70% of the 735 community and town councils are in membership. As well as our representative role, we also provide support and advice to councils on an individual basis and with Welsh Assembly Government support deliver a modular training programme for councillors. We believe strongly that community and town councils are well-placed to develop the economic, social and environmental well-being of the areas they serve and, as such, are active and proactive in debating key issues such as strategic planning, partnership working and their role and place within the public sector generally.

Whilst individual councils might respond to this consultation exercise, One Voice Wales wishes to submit this short statement on behalf of the sector although it has not had an opportunity due to the timing of the consultation period to consult with its National Executive Committee nor its membership organisations.

One Voice Wales is pleased to support the principles encompassed in the Local Government Byelaws (Wales) Bill and particularly welcomes the proposals for the 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 in general. The Bill will enable greater local ownership of the byelaw process as a means of addressing local issues. From a community and town sector perspective there is however specific issues that will need to be addressed to enable the first tier of local government to fully participate in the proposals set out within the Bill and these are addressed in the responses to the consultation questions below.

Annex 1 - Consultation Questions

1. 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.

Response: Yes. One Voice Wales considers there is a need to revise and consolidate legislation about the making and enforcement of byelaws in Wales as the existing system is overly bureaucratic, time consuming and the costs associated to implementing a byelaw prohibitive. Subject to a full survey of all community and town councils across Wales there has been relatively little activity in this area by community and town councils under the current arrangements and a simplification of the system for enacting byelaws is consequently welcomed. The proposals provide opportunities for community and town councils to re-consider their approach to administering byelaws within their area and provide scope for potentially greater local control. It is important however to note that given the costs associated to the development or amendment of a byelaw – as set out in section 8.6 of the Explanatory Memorandum - that it will only be the larger town councils who are likely to have

the resources in the immediate future to act on the proposals set out within the Bill. Currently over 75% of community and town councils in Wales precept less than £50,000 per annum (Source – Welsh Government Survey of Community and Town Councils 2010 – Social research number 07/2011) so the likelihood of spending between £7,000 and £9,000 on implementing or amending a byelaw will be prohibitive to smaller councils. Conversely for the larger councils the potential reduction in time to introduce the byelaw may provide the catalyst for them to address local issues in an effective manner, reduce bureaucracy and foster greater ownership of local laws. The larger councils will also have greater capacity to address the training and development issues associated with new activity.

2. 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)?

Response: For the reasons set out above the potential effectiveness of the Bill in terms of the community and town council sector will largely be determined by the individual authority’s resource position. For a small community council – and 60% precept less than £20,000 per annum (Source: Welsh Government Community and Town Councils Survey Findings 2010) – the ability to deploy the necessary resources to manage the operation of local byelaws is potentially cost prohibitive as well as not necessarily having the personnel capacity to manage such processes – 56% of community councils in Wales employ a Clerk for less than 10 hours per week (Source: Welsh Government Community and Town Councils Survey Findings 2010). For such councils the need to recruit personnel or contract in resources to administer a byelaw process as well as the costs of appropriately marketing any byelaws may act as a deterrent to take-up. So in essence the effectiveness of the proposals in the Bill for the community and town council sector will largely be determined by the resources that are available within each individual community council.

3. 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?

Response: Yes – no additional comments to add.

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

Response: One Voice Wales agrees that the Bill will provide for potentially increased ownership of byelaws by the community and town council sector. The requirement to carry out consultation as part of the evidence base for implementing byelaws will increase local accountability and transparency and ensure local residents and interest groups views are taken into account however the consultation requirement may act as a barrier to up-take. Findings from the Welsh Government Community and Town Councils Survey 2010 identified only one in ten community or town councils have a community engagement policy in place and of these none had a specific budget for community engagement in place. Section 8.12 of the Explanatory Memorandum references estimated consultation costs at £2,000 - £3,000 which equates to 15% to 23% of median precept across Wales at £13,300. As such it is arguable that until resources are identified and put in place by community and town councils or made available to them it will be difficult to see how the Bill will have a significant impact on the sectors ability to enact the proposals. Precept increases based on

the percentages in the ranges suggested above will be difficult for many community or town councils to justify to the electorate.

(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)?

Response: The processes set out within the Bill for the implementation or amendment of byelaws is streamlined however for the reasons set out above it is questionable whether the uptake by the community and town council sector will change dramatically as a consequence. Concern has been raised within the sector 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. This issue aside the processes proposed within the Bill should ensure greater consistency of approach across Wales which is welcomed and encourage the sharing of best practice that potentially will assist in the driving down of costs in the longer term – for the community and town council sector this will be of particular relevance and importance.

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

Response: Given the relatively low use of byelaws by the community and town council sector there will need to be an up skilling of those involved in the development or amendment of byelaws if the Bill is to be enacted by the sector. It will be the legislating authority's responsibility to make sure it is acting within its powers and that byelaws are properly drafted and made. Furthermore there will be a need to ensure that community and town councils acting on the proposals set out in the Bill demonstrate responsibility in using the powers correctly, proportionately and legally. There are a number of cost, capacity and training issues that the sector will need to address on all of these points. Unlike unitary authorities who already have arrangements in place to enforce byelaws the community and town councils are less likely to have such capacity to administer byelaws and this is likely to result in additional staffing needs to oversee the process and consequently new costs. It has been identified that it is likely to cost circa £500 – see section 8.10 of the Explanatory Memorandum – to undertake awareness training for staff. Again, based on the findings of the Welsh Government Community and Town Councils Survey 2010, only three in ten community or town councils have a training budget in place and these ranges from £30 to £7,000. How this resource will be realised is not entirely addressed within the Explanatory Memorandum.

It will be important that clear guidance is available to the community and town council sector on making byelaws and will be a prerequisite for ensuring adoption of the procedures set out in the Bill are implemented diligently. This is clearly addressed within the Bill by the Ministers intention to provide guidance.

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

Response: For the community and town councils sector there are a few practical issues that will need to be addressed by councils before they will be in a position to adhere to the proposals as set out in the Bill as not all have the appropriate infrastructure. Reference is made to publishing via the 'authority's website' however from the Welsh Governments own survey in 2010 only 47% of

community and town councils have a website. There is no reference within the Explanatory Memorandum on how councils without a website could comply and guidance on this would be welcomed. Additionally, the methods for consulting with relevant individuals and stakeholders will need to be spelt out to ensure that the evidence base for determining whether a byelaw is the most appropriate route to take to address a local issue is robust and would stand up to scrutiny. An assumption is made that consultation skills are prevalent within the community and town council sector however it is likely that training will be needed for those undertaking such activities in the future to acquire the necessary social science survey skills.

Additionally reference is made that for each legislating authority that 'a copy of the draft is deposited at its principal office'. For the community and town council sector 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.

Finally, guidance and/or training will be required for those given the responsibility for writing a byelaw within the community and town council sector and the intention of the Minister to introduce regulations and guidance prescribing how this is undertaken is acknowledged and welcomed.

These issues aside the procedures on the whole appear workable and clear albeit they may be cost prohibitive for many community councils across Wales.

7. 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)?

Response: Yes – subject to the issues raised above in responding to question 6.

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

Response: 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. Potentially key to the success of the enforcement provisions for the community and town council sector will be the conditions relating to the 'accredited person' who will administer the scheme. Details of the conditions to be satisfied by a person before a community council may authorise them for the purposes of giving notices is not clearly set out in the Explanatory Memorandum and further clarity would be welcomed on this matter.

(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)?

Response: 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.

The suggested penalties appear to be set at a reasonable level however the management of non-payment of fines may be a potential issue for community and town councils.

Financial Implications

8. 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.

Response: The Explanatory Memorandum references the benefits financially to both local authorities and the Welsh Government under sections 8.14 and suggests the financial impact for local authorities to be minimal in sections 8.10 to 8.12 and indeed savings are likely to be accrued as a result of enforcement through fixed penalty notices. One Voice Wales notes that commentary on the implications for the community and town councils is not directly addressed in the Explanatory Memorandum and considers that the financial implications for the community and town councils sector costs will not be minimal rather will potentially form a large percentage of their annual precept should they wish to implement or amend byelaws within their areas. The implementation of byelaws will have training and development costs attached and this will naturally be a determining factor in deciding whether to adopt them.

One Voice Wales considers that there may be opportunities for collaboration on byelaws through the Charters with Unitary Authorities and that this may be a way of making the management and administration of byelaws financially viable into the future at the very local level. One Voice Wales would welcome the opportunity of further discussions on this topic with Welsh Government and the WLGA.

9. Are there any other comments you wish to make about specific sections of the Bill? Ffon / Tel: 029 2089 8147 Ffacs / Fax: 029 2089 8021 Minicom: 029 2082 3280 E-bost / E-mail: celg.committee@wales.gov.uk

Response: Nothing to add over and above those points set out above.

Subordinate Legislation

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

Response: One Voice Wales supports the ability of the Minister to make subordinate legislation. However in doing so would wish that One Voice Wales be consulted and engaged in the process of the development of any regulations and orders prior to implementation.

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

Response: The subjects referred to within the Schedules relating to community and town councils appear to be appropriate for regulation by byelaws.

The responses to the Local Government Byelaws (Wales) Bill are the views of One Voice Wales the Welsh Government recognised national representative organisation for community and town councils in Wales. The views of One Voice Wales may be published on the National Assembly for Wales's website.

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