

Explanatory Memorandum to the Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014

This Explanatory Memorandum has been prepared by the Welsh Government Local Government Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Government Byelaws (Wales) Act 2012 (Amendment) Order 2014. I am satisfied the benefits outweigh any costs.

Leighton Andrews AM
Minister for Public Services
25 September 2014

1. Description

This Order amends Parts 1 and 2 of Schedule 1 to the Local Government Byelaws (Wales) Act 2012 (“the Act”). Part 1 contains a list of enactments byelaws made under which do not require confirmation by the Welsh Ministers. Part 2 contains a list of enactments byelaws made under which can provide for the issue of fixed penalties for breaches of the byelaws.

Byelaws previously not included in these lists may be identified by the Welsh Government, the legislating authorities or other sources. The Order adds byelaws which meet the Welsh Government’s criteria and are similar to other byelaws already on the list.

For the purposes of the Act, legislating authorities are county or county borough councils; community councils; National Park authorities in Wales or the Countryside Council for Wales¹.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This draft Order lists byelaw-making powers to be added to Schedule 1 to the Act, which are contained in historic local Acts and as a result may not be immediately accessible. However, the relevant provisions remain in force and the draft Order was produced in response to points raised by the National Assembly’s Communities, Equality and Local Government Committee during the Assembly’s scrutiny of the Bill, having considered the evidence submitted to it. The Order was consulted on in draft for a period of 12 weeks and the consultees included the public and local government. The consultation responses did not express concerns about the accessibility of the legislation containing the relevant byelaw-making powers. This draft Order itself will of course be as accessible to the public as all other subordinate legislation laid before the Assembly and made by the Welsh Ministers.

3. Legislative background

The powers enabling this instrument to be made are contained in sections 9 and 16 of the Act.

Section 9 states the Welsh Ministers may by Order amend Part 1 of Schedule 1 (byelaws not requiring confirmation) by adding to or subtracting from the list of enactments, or by amending the type of authority which may make byelaws without confirmation.

Section 16 states the Welsh Ministers may by Order amend Part 2 of Schedule 1 (byelaws in relation to which fixed penalty notices may be issued) by adding or subtracting from the list of enactments, or by amending the type of authority

¹ It is intended to use the forthcoming Environment Bill to amend the Act separately to substitute references to Natural Resources Wales for references to the Countryside Council for Wales.

which may offer fixed penalty notices. This Order will follow the Affirmative Resolution procedure.

4. Purpose & intended effect of the legislation

The purpose of sections 9 and 16 of the Act is to make it possible to add new legislation or subtract existing legislation from Schedule 1. This means byelaw powers subject to the requirement for confirmation may be considered by the Welsh Government for exemption from this requirement and may be modified to include enforcement via FPNs.

The effect of the exercise of the powers under section 9 of the Act could bring about an increase in the list of byelaw powers which do not need confirmation by the Welsh Ministers and thereby increase ownership of legislating authorities for this regulatory mechanism. The converse effect of subtracting legislation from Schedule 1 Part 1 would give the Welsh Ministers the ability to re-instate the need for confirmation should the need arise.

At present, the Order contains 10 local Acts recommended for exemption from the need for confirmation and 9 local Acts for use of FPNs. One of these Acts was identified by the Communities, Equality and Local Government Committee during the Stage 1 Committee stage in March 2012. Following a commitment made by the then Minister for Local Government and Communities, Carl Sargeant AM, to review the byelaw-making powers in these and other Local Acts officials have trawled through relevant legislation. The Acts in the Order have very similar characteristics to Acts on the original Schedule 1 and are therefore recommended for inclusion.

5. Consultation

Consultation with local government on the proposed Act as a whole took place (21 June 2010 to 17 September 2010) to sound out views on proposals to simplify the confirmation process as well as to use fixed penalties for enforcement. The majority of respondents were in favour of the proposals. A report on the responses may be found on the Welsh Government archive website

<http://www.webarchive.org.uk/wayback/archive/20110228135938/http://wales.gov.uk/consultations/localgovernment/byelaws/?lang=en&status=closed>

Consultation specifically on the draft Order took place from 17 February to 11 May 2014 together with consultation on other subordinate legislation and draft statutory guidance to be made under the Act. Details on link below:

<http://wales.gov.uk/consultations/localgovernment/140213-local-government-byelaws-consultation/?status=closed&lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Purpose and intended effect of the legislation

Option 1 - Do nothing

Unless the order-making power is exercised, Schedule 1 will remain static. This means it would not be possible to include enactments which were not previously identified as being suitable to benefit from exemption from the need for the Welsh Ministers' confirmation. Similarly, it would not be possible to include additional enactments to take advantage of enforcement via fixed penalty notices.

Conversely, it would also mean enactments could not be subtracted from Schedule 1 if it was deemed appropriate to do so.

The "do nothing" option would mean reform of the byelaw process would be restricted.

Option 2 – Do minimum

Limit Schedule 1 to the existing byelaw powers plus the additional 10 powers which would be included under the current Order.

Option 3 - Introduce the Order

The Order makes it possible for an increased number of byelaws to be made by legislating authorities without the need for confirmation by the Welsh Government. It also means many more byelaws may be enforced by FPNs. This makes the process for adopting byelaws less bureaucratic for legislating authorities and as a result encourages the use of byelaws as a regulatory mechanism.

During the passage of the Act, work continued to identify additional byelaw making powers for which confirmation by the Welsh Ministers was no longer deemed appropriate and / or for which enforcement through FPNs would be suitable.

We have identified 10 local Acts to be added to Part 1 of Schedule 1 (byelaws not subject to confirmation) and nine to be added to Part 2 (byelaws in relation to which FPNs may be issued). These are listed in the draft Order.

Costs & benefits

Costs and benefits – Option 1 do nothing

A best estimate of the administrative cost to local authorities of enacting byelaws is £7000 - £9000 per byelaw (source: Association of Council Secretaries and Solicitors Nov 2011, now called Lawyers in Local Government). This related to the resource cost of drafting the byelaw,

completing consultation and press notices and submitting the byelaw to the Welsh Government for confirmation. A best estimate of the cost to the Welsh Government for confirming a byelaw is £1250 per byelaw (source: Welsh Government). This relates to the cost of policy and legal resources to take the byelaw through the confirmation process. These costs will be reduced for local authorities and Welsh Government for those byelaws which are already on Schedule 1 since staff time would be saved. The option of issuing FPNs, if taken, would remove the need for local authority resources to be used in preparing statements and prosecution files and would also release Magistrate Courts' time.

However, with the "do nothing" option these savings would be restricted to those attributable to the byelaws shown on the original Act which received Royal Assent in November 2012.

Cost and benefits – Option 2 do minimum

As a result of removing the requirement for Welsh Ministers' confirmation, the 10 byelaw powers to be added under the Order would be capable of achieving a saving to legislating authorities of approximately £1500 per byelaw (assuming such byelaws were made). It would also be capable of saving Welsh Government about £1250 per byelaw during the corresponding time (again assuming such byelaws were made).

Cost and benefits – Option 3 use Order making power

This option would widen the scope of the Act by potentially increasing the number of byelaws which do not require confirmation from the Welsh Ministers and by increasing the number of byelaw-making powers under which authorities may issue FPNs for enforcement.

In the future, the Welsh Government and legislating authorities may identify byelaw powers which are not currently included in Schedule 1. The Welsh Government would need to review these for suitability before an Order amending Schedule 1 could be consulted on.

It is anticipated the Order will be used to add byelaw powers to Schedule 1 rather than to subtract them, although the power under which the Order would be made could also be used to subtract byelaw powers from Schedule 1.

There would be a periodical cost to Welsh Government in staff time to assess new legislation, and prepare and consult on the order. However in the long term this option would reduce bureaucracy for both legislating authorities and the Welsh Government and increase ownership of byelaws by legislating authorities. It would mean authorities would have greater control over the timescales needed to bring their byelaws in to force and ensure they coincide with special requirements eg summer months, special events etc.

The introduction of FPNs would make available an alternative means of enforcement of byelaws. The fines collected in respect of these offences may

be used to fund improvements to implement behaviour-changing measures and make the enforcement system more effective.

The estimate of cost savings for an authority as a result of removal of the requirement for confirmation in respect of a byelaw would be less than the total cost of making each byelaw for a local authority because activities such as consultation and advertising would still need to be carried out; the estimate for cost savings by the Welsh Government is £1250. It is also estimated the savings achieved by issuing an FPN rather than pursuing an offence against a byelaw through the Magistrates Courts would be of the order of £500-£1000 per breach of a byelaw (source: Association of Council Secretaries and Solicitors, Wales Branch, now called Lawyers in Local Government).

Since most authorities already have arrangements for enforcement through FPNs for a variety of offences including littering, noise, offences under dog control orders, graffiti and fly posting in place under the Clean Neighbourhoods and Environment Act 2005, it is anticipated any additional costs of preparation to issue FPNs would largely be limited to awareness training for staff. The best estimate for this is £500 per authority.

Summary of preferred option

The preferred option is Option 3.

In summary, option 3 enables legislating authorities to increase the number of byelaw powers which they may take ownership for without the need for the Welsh Ministers' confirmation. It also makes it possible to increase the use of FPNs. These notices have been proven to be both an efficient method of enforcement and an effective means of changing behaviour.

The benefits of Option 3 are expected to be:

- Increased legislating authority ownership of all byelaws in Schedule One, Part 1.
- Reduced Welsh Government staff costs for byelaws in Schedule One, Part 1.
- additional enforcement option for future byelaws in Schedule One, Part 2.
- a potential release of Magistrate Courts' time; and
- Adding byelaws to Schedule One, Parts 1 and 2 is likely to translate into cost reductions for legislating authorities which choose to develop or amend byelaws.

Cross reference

Please note this EMRIA is accompanied by an EMRIA on Local Government Byelaws (Fixed Penalties) (Wales) Regulations 2014 which is submitted separately.

Consultation

This RIA was sent out for consultation during 17 February to 11 May 2014, together with guidance for the Act as well as the draft Regulations and draft Order. There were no negative responses and no requests for further information on either the draft Order or the corresponding RIA. A summary of responses has been prepared and following approval by the Minister, will be available on the Welsh Government website.

<http://wales.gov.uk/consultations/localgovernment/140213-local-government-byelaws-consultation/?status=closed&lang=en>

Competition Assessment

A competition filter test has been applied to the draft Order. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. Legislating authorities will have increased ownership over the byelaw making process with the removal for the need for confirmation by the Welsh Ministers. The Act also makes consultation a statutory requirement. Authorities will be required to consult the public, business, and the third sector during the initial decision making process during which a byelaw is identified to be the most appropriate means of addressing a problem. Authorities will also need to advertise the byelaw once it is made and before it is finalised.

Post implementation review

The Welsh Government will monitor the impact of the order making process through feedback from legislating authorities and other stakeholders.