



## BRIEFING PAPER

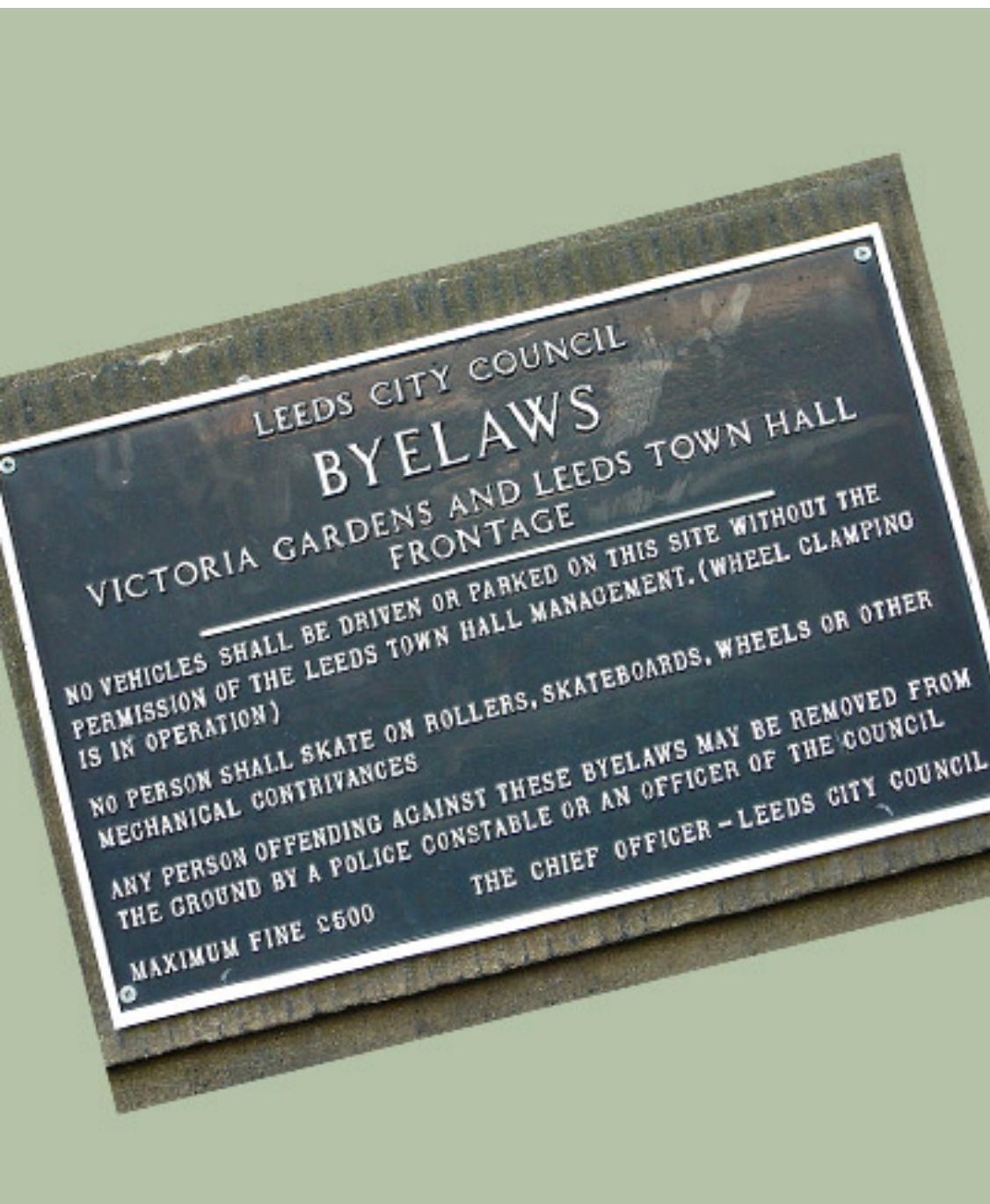
Number 01817, 1 March 2016

# Local authority byelaws

By Mark Sandford

Inside:

1. Introduction
2. Making byelaws
3. Confirming authorities
4. Reform of byelaw procedure: England
5. Reform of byelaw procedure: Wales



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Introduction</b>	<b>4</b>
<b>2. Making byelaws</b>	<b>6</b>
2.1 The purposes of byelaws	6
2.2 The original procedure	6
2.3 The new procedure	7
2.4 Model byelaws	8
<b>3. Confirming authorities</b>	<b>9</b>
3.1 Byelaws falling within DCLG's responsibility	9
3.2 DEFRA	10
3.3 Department for Transport	10
3.4 DCMS	10
3.5 Department of Health	10
3.6 Home Office	11
<b>4. Reform of byelaw procedure: England</b>	<b>12</b>
4.1 Policy background to the 2015 reforms	12
4.2 Proposed new arrangements under the Labour government	12
4.3 Coalition Government proposals	13
<b>5. Reform of byelaw procedure: Wales</b>	<b>15</b>

Contributing Authors:

Mark Sandford

## Summary

Local authorities and certain other bodies have powers under various Acts of Parliament to make byelaws, which are essentially local laws designed to deal with local issues. At present, byelaws must be approved by central government before they can be brought into force. Their revocation also requires the intervention of central government and they are enforced through the magistrates' courts. Powers over byelaw procedure are devolved to Scotland, Wales and Northern Ireland.

In 2016 new regulations were made reforming the procedure for making some byelaws in England. This followed several years of debate over reducing or removing the Secretary of State's role in confirming the majority of proposed byelaws, beginning under the 2005-10 Labour government. This was designed to ensure a simpler, more straightforward process and local "ownership" of such laws. The [Local Government and Public Involvement in Health Act 2007](#) permits regulations to be made to reform these procedures.

The Welsh Assembly Government has passed the [Local Government Byelaws \(Wales\) Act 2012](#), which passes control of most byelaw procedure to local government in Wales.

# 1. Introduction

Local authorities and certain other bodies have powers under various Acts of Parliament to make byelaws, which are essentially local laws designed to deal with local issues. They have been described as follows:

Byelaws generally require something to be done – or not to be done – in a particular location. They are accompanied by a sanction or penalty for non-observance. If validly made, byelaws have the force of law within the areas to which they apply. Offences against byelaws attract a penalty fine which can, at present, only be enforced through the Magistrates' Courts.<sup>1</sup>

*Halsbury's Laws* identifies four elements which are essential to the validity of a byelaw, as follows:

(1) It must be within the powers of the local authority which makes it; (2) It must not be repugnant to the law of England; (3) It must be certain and positive in its terms; and (4) It must be reasonable.<sup>2</sup>

In England, most byelaws must be confirmed by the Secretary of State of the relevant Government department before they come into effect. The rationale for this is that byelaws create criminal offences and should therefore be subject to scrutiny by central government.<sup>3</sup> A new procedure has been introduced to cover byelaws that were previously to be confirmed by the Secretary of State for Communities and Local Government (see section 2.3 below). Confirming authorities will seek to ensure:

- that the byelaws are intra vires the relevant legislation and that any action required by the legislation, such as consultation with a named public body, has been taken;
- that they do not duplicate or conflict with the general law, existing byelaws or any local Act, or common law;
- that the nuisance they address merits criminal sanctions and that, to a reasonable person, the penalty available is proportionate;
- that they directly address a genuine and specific local problem and do not attempt to deal in general terms with essentially national issues;
- that they do not conflict with government policy.<sup>4</sup>

This note covers England and Wales only. The Scottish Parliament is responsible for confirming byelaws in Scotland, under sections 201-204 of the [Local Government \(Scotland\) Act 1973](#), which largely mirror the original provisions in England (see section 2.2). However, Scottish local authorities can revoke byelaws without reference to the Scottish Parliament (see section 202C of the 1973 Act). Broadly similar provisions can be found for Northern Ireland, in sections 90-94 of the [Local](#)

<sup>1</sup> DCLG, [The making and enforcement of byelaws: consultation](#), August 2008, para 2.1

<sup>2</sup> Halsbury's Laws of England, *Local government* (Volume 69, 2009, 5<sup>th</sup> ed, para 560)

<sup>3</sup> See ODP, [Local authority byelaws in England: a discussion paper](#), April 2006, p9

<sup>4</sup> See DCLG, [Local government legislation: byelaws](#), 18 September 2012

## 5 Local authority byelaws

[Government Act \(Northern Ireland\) 1972](#): the Northern Ireland Assembly confirms byelaws in Northern Ireland.<sup>5</sup>

In Wales, the responsibility for confirming byelaws fell to the Welsh Government until the passing of the [Local Government Byelaws \(Wales\) Act 2012](#) (see section 5 below). As of November 2012, confirmation of byelaws by the Welsh Government is not required: local authorities can simply pass and revoke byelaws locally.

---

<sup>5</sup> See also the DOENI page [Bye-laws: Information](#).

## 2. Making byelaws

### 2.1 The purposes of byelaws

Under section 235 of the [Local Government Act 1972](#), local authorities have a general power to make byelaws for “good rule and government” of the whole or any part of the district or borough and for the prevention and suppression of nuisances. Other powers to make byelaws on specific matters can be found in other Acts, such as the [Public Health Acts Amendment Act 1907](#), the [Public Health Act 1936](#) and the [Public Health Act 1961](#).

The **procedure** for making byelaws is set out in section 236 of the [Local Government Act 1972](#). Byelaws may be made by county, district or unitary authorities on matters which come within their responsibilities. Parish and town councils may make byelaws on matters within their competence, such as pleasure grounds, cycle parks, baths and wash-houses, open spaces, and burial grounds. Section 236 provides that byelaws must be made under the common seal of the authority making them or, if it has no common seal, ‘under the hands’ of two councillors (i.e. by means of a thumb-print or signet ring rather than a signature).

Byelaws cannot be used to overrule existing primary legislation. Unlike other primary legislation, they are open to challenge in the courts. They should not be used where legislative authority to address the matter in question already exists.<sup>6</sup>

### 2.2 The original procedure

This procedure applies to byelaws on matters other than those covered by the Department for Communities and Local Government.

A local authority wishing to make a byelaw must draw up the byelaw and then apply to the Secretary of State for confirmation. At least a month before doing this, it must publish a notice in a local newspaper indicating its intention to do so. This period is known as the ‘month of deposit’: a copy of the byelaw must be made available at the council’s offices during this time. There is no requirement for a formal consultation process on a new byelaw.

After the month of deposit, the byelaw must be sent to the Secretary of State for approval, which will normally be granted as soon as possible. Objections to byelaws can be sent to the Secretary of State. Normally, if objections are made, the Government will pursue a locally-negotiated solution, unless significant matters of law or policy are at stake.

---

<sup>6</sup> The DCLG has in the past provided a list of subjects which are unlikely to be suitable for byelaws, though this is no longer available on its website. It included: advertisements, including notices, posters and bills; birds, birds’ nests, birds’ eggs; camping – removal of campers; damage; dangerous driving in parks and open spaces; deposits on the highway; dumping and fly tipping; firearms; graffiti; gypsies and travelers; language – violent, threatening or abusive; litter; motorised scooters; public meetings and gatherings; public order; sale of vehicles on road; traffic. This list should be taken as indicative only; councils considering byelaws should consult the DCLG.

Section 236B of the 1972 Act, introduced by the [Local Government and Public Involvement in Health Act 2007](#), permits a local authority to revoke a byelaw. This is done by means of a new byelaw, which must be confirmed by the Secretary of State in the usual way.

## 2.3 The new procedure

Regulations changing the procedure for making byelaws in England were approved by the House of Commons on 19 October 2015 and by the House of Lords on 27 October 2015, having been laid on 21 July 2015. The regulations were made on 11 February 2016.<sup>7</sup>

These regulations only apply to the classes of byelaws for which the Department for Communities and Local Government was previously the confirming authority (i.e. those listed under section 3.1 above).<sup>8</sup> Byelaws for which other departments are the confirming authority must continue to be made under the existing system. This point was challenged in the House of Lords debate on the regulations:

**(Baroness Williams of Trafford)** ... What other government departments do is a matter for them, but hopefully where CLG starts, others may follow, so that we may see a flood of by-laws from other government departments in due course.<sup>9</sup>

Under the 2015 regulations, a local authority wishing to make a byelaw must prepare a 'scheme', which must include a draft of the proposed byelaw and an assessment of the regulatory burden which it would create. It must also consult with people who would be affected by the byelaw, and publish a statement of its assessment both locally and on its website. It may then apply to the Secretary of State for approval, identifying what it intends to achieve with the byelaw, whether a model byelaw will be used, and summarising any responses to the consultation.

The Secretary of State must then decide whether to "give leave to the authority to make the byelaw".<sup>10</sup> If s/he does so, the local authority must then publish a notice on its website, and in at least one local newspaper, stating its intention to make the byelaw. A formal consultation period of at least 28 days runs from the publication of this notice. If the authority then makes the new byelaw, it must do so no more than six months after the publication of this notice.

Therefore, the Secretary of State has a veto power over byelaws under this new procedure. However, the new regulations also permit byelaws to be *revoked* without the Secretary of State's involvement. As with the new procedure for making a byelaw, a 'scheme' must be prepared and published, followed by a 28-day formal consultation period. Within six months of the publication of the scheme, the local authority may then revoke the byelaw.

---

<sup>7</sup> See the [Byelaws \(Alternative Procedure\) \(England\) Regulations 2016](#) (SI 2016/165).

<sup>8</sup> This is made clear by Schedule 1 to the new regulations, which lists the classes of byelaws 'prescribed' for the purposes of the regulations.

<sup>9</sup> [HL Deb 27 Oct 2015](#) cGC174

<sup>10</sup> This phrase is used in paragraph 7 (2) (a) of the new regulations.

## 2.4 Model byelaws

The DCLG website provides various sets of model byelaws which contain standard wording for laws on a number of subjects.<sup>11</sup> The use of model byelaws is not mandatory, but can help to ensure that byelaws introduced by a local authority are correctly worded and within the authority's powers, thus reducing the risk of legal challenge. The DCLG recommends that elements in the model byelaws should not be included if they are not relevant to the authority's circumstances – e.g. fishing should not be banned in a park where there is no water.

The model set includes byelaws on pleasure grounds, public walks and open spaces; amusement premises; pleasure fairs; promenades; the seashore; markets; and 'good rule and government'. To find out whether a byelaw could be introduced on a particular matter, it is advisable to contact the Department for Communities and Local Government. Information on who to contact, and on the procedure for making bye-laws, is available [on the Department's website](#).

---

<sup>11</sup> See the [model byelaws](#) section on the DCLG website.



## 3. Confirming authorities

### 3.1 Byelaws falling within DCLG's responsibility

Many byelaws are made in areas that are the responsibility of the Department for Communities and Local Government (DCLG). These byelaws will in future be subject to the 'new procedure' set out in section 2.3 above, where the Secretary of State will 'give leave' for a byelaw to be made. Byelaws falling under the remit of other Government departments will continue to be made under the 'original procedure', and the relevant Government department will act as the 'confirming authority'.

The following table lists the subject matter of byelaws which fall within the remit of the Secretary of State for Communities and Local Government, and the enabling legislation under which they are made. :

<b>Power</b>	<b>Subject matter</b>
Section 235 of the Local Government Act 1972	Good rule and government and the prevention of nuisances. This includes climbing on bridges, skateboarding, and riding on verges
Section 164 of the Public Health Act 1875	Public walks and pleasure grounds
Sections 12 and 15 of the Open Spaces Act 1906	Open spaces; burial grounds
Sections 82 and 83 of the Public Health Amendment Act 1907	Use of the seashore and promenades, including bait digging, fishing, horse riding and interference with life-saving equipment
Section 231 of the Public Health Act 1936	Public bathing
Section 60 of the Food Act 1984	Markets, including operating hours, maintaining cleanliness, preventing obstruction, use of water taps and prevention of fires
Sections 75 and 77 of the Public Health Act 1961, as amended by section 22 of the Local Government (Miscellaneous Provisions) Act 1976	Amusement premises; pleasure fairs; hairdressers and barbers

DCLG has in the past indicated that it will accept byelaws unless there are good reasons for not doing so:

Provided there is no legal problem and no conflict with general government policy, we shall not oppose or query a byelaw simply

because our judgement of what is necessary or appropriate differs from the council's. Nor shall we oppose or query aspects of byelaws which relate to purely local concerns, such as the precise areas to which they will apply.

We shall assume that the wording of any byelaws has been checked and is deliberate: this assumption will apply to any omissions or inclusions and any statement of areas to which the byelaws will extend. Unless an apparent error has legal implications or affects a point of principle, we shall not take it up with the council.<sup>12</sup>

## 3.2 DEFRA

DEFRA covers byelaws on common land, town and village greens and on landscape protection including national parks and areas of outstanding natural beauty. Guidance notes and model byelaws are given on the Department's website.<sup>13</sup> DEFRA also once had responsibility for byelaws relating to dogs. These have now been superseded by sections 55-67 of the [Clean Neighbourhoods and Environment Act 2005](#).

## 3.3 Department for Transport

The DfT has policy responsibility for byelaws relating to the following forms of transport:

- Railways
- Other guided transport systems e.g. tramways and light rapid transit systems
- Ports and harbours
- Airports
- Bridges and tunnels
- Walkways
- Taxis

Further information on the statutory basis for these powers is given in the DCLG's discussion paper published in 2006.<sup>14</sup>

## 3.4 DCMS

Byelaws which relate to public libraries must be confirmed by the Secretary of State for Culture, Media & Sport.<sup>15</sup>

## 3.5 Department of Health

Under the *Local Government (Miscellaneous Provisions) Act 1982*,<sup>16</sup> the Department of Health has policy responsibility for byelaws relating to

---

<sup>12</sup> See DCLG, [Local government legislation: byelaws, September 2012](#)

<sup>13</sup> See DEFRA, [Byelaws powers for local authorities, March 2009](#)

<sup>14</sup> ODPM, [Local authority byelaws in England: a discussion paper](#), April 2006

<sup>15</sup> See DCMS, [Local byelaws](#)

<sup>16</sup> See also Schedule 6 and s.120 of the [Local Government Act 2003](#).

the practice of acupuncture and businesses providing tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.<sup>17</sup>

### 3.6 Home Office

The Home Office has had responsibility for byelaws relating to the consumption of alcohol in public places. However, sections 12 to 16 of the *Criminal Justice and Police Act 2001* replaced these byelaws with powers which do not require the approval of the Secretary of State. Local authorities may designate areas in which there are problems arising from public drinking. The police have powers to require persons not to consume alcohol in these areas and to confiscate alcohol and containers.

---

<sup>17</sup> See Library standard note SN05079, [Regulation of tattooing and body piercing businesses](#); Department of Health, [Local Government Act 2003: Regulation of cosmetic piercing and skin colouring businesses](#), 2004

## 4. Reform of byelaw procedure: England

### 4.1 Policy background to the 2015 reforms

In the 2006 consultation [Strong and prosperous communities](#), the Government announced its intention to end the Secretary of State's role in confirming byelaws and to make it possible for councils to enforce byelaws through fixed penalty notices.<sup>18</sup> Sections 129-135 of the [Local Government and Public Involvement in Health Act 2007](#) permit the Secretary of State to make regulations to establish a new procedure for certain byelaws, and to prescribe classes of byelaw which could be enforced through fixed penalty notices.

DCLG issued a consultation paper on byelaws in August 2008 which was intended to inform the regulations to be made under the Act.<sup>19</sup> The Government's response was published in October 2009, signalling its intention to proceed with these proposals.<sup>20</sup> George Jones and John Stewart called the process "...a major step forward in the devolution of powers to local authorities." They wrote:

The role of a local legislature defining the acceptable and the unacceptable is fitting for a local authority whose role in community leadership and place-shaping has been recognised by the Government.<sup>21</sup>

They considered that the key issue would be the attitude of the courts which might consider they have to play "an active role once the ministerial check on byelaws has been removed."

Although the byelaw provisions in the 2007 Act were brought into force on 27 January 2010,<sup>22</sup> the Labour Government did not bring forward regulations in advance of the 2010 General Election.

### 4.2 Proposed new arrangements under the Labour government

The new arrangements proposed were:

**The byelaws subject to new procedures** would include all those confirmed by DCLG. However, several other departments had indicated their willingness to relinquish their confirmatory role. These included: (1) DCMS regarding behaviour inside libraries and museums; (2)

<sup>18</sup> DCLG, [Strong and prosperous communities: the local government white paper](#), Cm 6939-I, October 2006, para 3.14. The byelaw proposals had also been aired in a previous paper: ODP, [Local authority byelaws in England: a discussion paper](#), April 2006

<sup>19</sup> DCLG, [Communities in control: real people, real power - the making and enforcement of byelaws:- consultation](#), August 2008

<sup>20</sup> DCLG, [Communities in control: real people, real power – Government response to the making and enforcement of byelaws](#), October 2009

<sup>21</sup> George Jones and John Stewart, "Getting by with byelaws" *Municipal Journal*, 7 May 2009, pp26-7

<sup>22</sup> The *Local Government and Public Involvement in Health Act 2007 (Commencement No. 9) Order 2010*, SI 2010/112

Department of Health regarding acupuncture and tattooing, skin colouring, cosmetic piercing and electrolysis; (3) DEFRA in respect of local nature reserves; (4) Department for Transport regarding byelaws on a range of subjects.

### **Central confirmation was to be retained for certain byelaws**

which are controversial or have impact beyond the immediate local environment, for example, DEFRA-confirmed byelaws on countryside recreation. This would also apply to byelaws made by bodies such as airport authorities which are not accountable to the local community in the usual way.

A new **seven step process for making byelaws** was envisaged consisting of the following steps: (1) Authority determines if there is a need for the byelaw, if it has the power to make it, whether or not it duplicates or contradicts existing legislation; (2) Authority consults interested parties; (3) Authority drafts the byelaw; (4) A 28 day minimum consultation period involving notification and opportunities for inspection, comment and public debate; (5) Advertisement of draft byelaw at beginning of consultation period; (6) Authority makes decision - if major amendment is envisaged the process starts again; (7) Authority makes and seals the byelaw and publicises its existence.

**Enforcement by fixed penalty notices** – Byelaws subject to confirmation by DCLG and certain other categories listed above were deemed to be suitable for enforcement by fixed penalty notices (FPNs). Authorities would be able to specify penalties between £50 and £80 (£75 is the default amount specified by the 2007 Act). In some circumstances, for example for serious or repeat offences, enforcement through magistrates' courts may remain the preferred option. Government guidance was to be issued which would include provision for using FPN receipts to combat any relevant nuisance.

## 4.3 Coalition Government proposals

Grant Shapps, Minister for Housing and Local Government, announced in August 2010 that councils would be given a new power to “create new byelaws or get rid of old ones without seeking permission from Whitehall”.<sup>23</sup> 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”.

It is not clear why the provisions of the new regulations differ from the aspirations expressed in 2010. The House of Lords Secondary Legislation Scrutiny Committee was critical of the delay:

The Explanatory Memorandum ... fails to explain why the Department has taken so long to progress the proposals from a consultation process held in 2008, through a Ministerial announcement in 2011 confirming that the proposals would be taken forward, to implementation through Regulations laid only in 2015. Local authorities, and others interested in this policy area, may reasonably expect the Government to offer an explanation of

---

<sup>23</sup> DCLG, [Grant Shapps: Bypass Whitehall and scrap outdated byelaws](#), 31 August 2010

a four-year delay in acting on an undertaking to reduce unnecessary bureaucracy.<sup>24</sup>

---

<sup>24</sup> Secondary Legislation Scrutiny Committee, [8<sup>th</sup> report 2015-16](#), HL Paper 34, 2015, p. 12

## 5. Reform of byelaw procedure: Wales

The Welsh Government passed the [Local Government Byelaws \(Wales\) Act 2012](#) on 29 November 2012. The Act allows local authorities make new byelaws following a public consultation, but removes the requirement for Welsh Ministers to confirm new byelaws before they become law. As is the case currently, the Act stipulates that byelaws cannot be used to address a subject provided for by an Act of Parliament or of the Assembly.

The Act provides that a local authority must make an initial statement announcing its intention to make a byelaw, and it must then hold a consultation. Then, a further written statement must be published including the responses to the consultation and the local authority's decision regarding the byelaw. If applicable, the council must then publish a notice stating its intention to make the byelaw, and a copy of the draft byelaw must be available on the council's website and at its offices for a further six weeks. After this time, the byelaw may be made. The formal procedure for finally making the byelaw can be found in section 8 of the Act.

The new procedure, which does not require confirmation, only applies to byelaws made under the enactments listed in Schedule 1 part 1 of the Act. Section 7 provides an alternative procedure for byelaws made under other enactments: these will still need to be confirmed by the National Assembly.

Section 12 provides for fixed penalty notices to be issued in respect of breach of byelaws made under specific enactments. The enactments to which this applies are listed in Schedule 1 part 2.

The Act allows councils, including community councils, to revoke byelaws. It also allows Welsh Ministers to revoke obsolete byelaws, which they intend to do only when it is unclear which local authority may do so.

This Act was the first passed by the National Assembly under the legislative powers that it assumed following the referendum of March 2011. The Act was referred to the Supreme Court by the UK Government on the grounds that it was outwith the legislative competence of the Assembly. In its [judgment on 21 November 2012](#), the Supreme Court found in favour of the Assembly.

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcinfo@parliament.uk](mailto:hcinfo@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).