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Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF/CS/0066/12

Ann Jones AM
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Communities, Equalities and Local Government Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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 March 2012



Local Government Byelaws (Wales) Bill

During my recent appearance before the Communities, Equalities and Local Government Committee, I undertook to provide further clarification of a number of issues of interest to the Committee. These are set out below.

Possible inclusion of the Swansea City Council (Tawe Barrage) Act 1986 and the West Glamorgan Act 1987 in the Bill as byelaw powers to be subject to the 'no confirmation' procedure

The Committee raised a query regarding the identification of further byelaw making powers contained within the Swansea City Council (Tawe Barrage) Act 1986 and the West Glamorgan Act 1987, which have come to light during the stage one evidence and scrutiny process. I am grateful to the Committee for bringing these byelaw powers to our attention. This highlights the difficulties faced in identifying all relevant byelaw powers and supports the need for clause 9 of the Bill which enables the Welsh Ministers to amend the list of byelaws in Part 1 of Schedule 1 which are subject to the no confirmation procedure.

We will review the byelaw-making powers in these and other Local Acts which have been identified as a consequence of the Committee's query to determine whether the 'no confirmation' procedure is appropriate.

Discretion of local authorities to delegate functions relating to byelaws to a committee

I agreed to clarify the comment in my letter of 16 February 2012, concerning the discretion of local authorities to delegate functions relating to byelaws to a committee.

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 ('the regulations') provide that the power to make, amend, revoke or re-enact a byelaw is not a power for which an authority's executive is to be responsible. The effect of this is that the power is the responsibility of the authority. I take the view that the regulations sufficiently and appropriately provide for the full council to be engaged to a proportionate degree with regards to the key aspects of the byelaw process.

Section 101 of the Local Government Act 1972 provides a general power for a local authority to arrange for the discharge of any of its functions by a committee, sub-committee or an officer of the authority. It is for individual authorities to determine the precise arrangements, including whether it is appropriate for the matter to be referred to a committee, and I have no intention of interfering in that.

Mike Hedges queried the role of overview and scrutiny committees. The Local Government Act 2000 ('the 2000 Act') makes provision for overview and scrutiny committees. Section 21(2)(c) of the 2000 Act provides that an overview and scrutiny committee has the *power to review or scrutinise decisions made, or other action taken*, in connection with the discharge of *any functions which are not the responsibility of the executive of the authority*. Section 21(2)(d) of the 2000 Act provides that an overview and scrutiny committee *can make reports or recommendations* to the authority with respect to the discharge of any functions which are *not the responsibility of the executive*, of which the byelaw process would form part.

Process for obtaining a person's name and address if they fail to provide it and powers of arrest

Clause 14 of the Bill provides an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom the notice is issued to give their name and address. Any person who fails, without reasonable excuse, to provide their name and address or gives a false name and address will commit an offence and is therefore liable on summary conviction to a fine not exceeding level three on the standard scale, which is currently £1000.

Similar provisions are contained within the Clean Neighbourhoods and Environment Act 2005 ('the 2005 Act') in relation to environmental offences. This enforcement mechanism is therefore already used widely by authorities in Wales.

Guidance issued on the 2005 Act suggests that local authorities agree working protocols with their police authority so that police officers and police community support officers may assist in situations where an alleged offender refuses to supply details. I anticipate that similar arrangements would be appropriate in relation to byelaws.

To assist legislating authorities further with enforcement in this regard, the Bill also makes provision at clause 18 for the Welsh Ministers to issue statutory guidance. This includes guidance on the procedures for the enforcement of byelaws. Accordingly, the guidance will seek to help legislating authorities in seeking to enforce fixed penalty notices and may, for example, recommend a well publicised lead-in period prior to any fixed penalty notices being issued. This will further help to engage the public and generate public support for fixed penalty notices and the associated process.

During committee we touched upon the powers of local authority officers to make a citizen's arrest in the eventuality that a person failed to provide their name and address and I undertook to provide a note. Section 24A of the Police and Criminal Evidence Act 1984 ('the 1984 Act'), provides that a person other than a constable may, subject to certain qualifications, arrest anyone who is, or who they reasonably believe to be, in the process of committing an 'indictable' offence. Accordingly, it appears that a citizen's power of arrest

will depend upon whether the offence is an 'indictable' offence and if so whether the conditions of section 24A of the 1984 Act are met.

The offences detailed within the Bill provide that contravention of a byelaw is an offence that is liable on 'summary' conviction rather than being an 'indictable' offence, as such, it seems a citizen or indeed a local authority officer could not lawfully make an arrest for such a contravention pursuant to the 1984 Act. The Local Government Byelaws (Wales) Bill does not seek to change this position.

I trust this will assist the Committee's further deliberations.

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

Carl Sargeant AC / AM

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