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.

The Labour Government proposed reform of byelaw procedures, including removal of the Secretary of State’s role in confirming the majority of proposed byelaws. This was designed to ensure a simpler, more straightforward process and local “ownership” of such laws. The Government also proposed alternative enforcement procedures through fixed penalty notices (FPNs).

Though the Local Government and Public Involvement in Health Act 2007 permitted regulations to be made to reform these procedures, no regulations have yet been passed in respect of England. The Welsh Assembly Government has passed the Local Government Byelaws (Wales) Act 2012, which would pass control of most byelaw procedure to local government: it has not yet been brought into force.
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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.¹

*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.²

In England, 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.³ In most (but not all) cases, the confirming authority will be the Secretary of State for Communities and Local Government. 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.⁴

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 provisions in England. Broadly similar provisions can be found for Northern Ireland, in sections 90-94 of the *Local Government Act (Northern Ireland) 1972*: the Northern Ireland Assembly confirms byelaws in Northern Ireland.⁵

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.

¹ DCLG, *The making and enforcement of byelaws: consultation*, August 2008, para 2.1
⁴ See DCLG, *Local government legislation: byelaws*, 18 September 2012
⁵ See also the DOENI page *Bye-laws: Information*. 

3
2 Making 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). The authority must then apply to the Secretary of State for confirmation, but at least a month before doing so 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.

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.6

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.

2.1 Model byelaws

The DCLG website provides various sets of model byelaws which contain standard wording for laws on a number of subjects.7 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.

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6 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.

7 See the model byelaws section on the DCLG website.
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.

3 Confirming authorities

The confirming authority for byelaws will often be the Department for Communities and Local Government. The DCLG will confirm any byelaws made under the ‘good rule and government’ provisions highlighted above. Other departments act as the confirming authorities in other areas.

3.1 DCLG

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

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

DCLG has 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.\textsuperscript{8}

### 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.\textsuperscript{9} 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.\textsuperscript{10}

### 3.4 DCMS

Byelaws which relate to public libraries must be confirmed by the Secretary of State for Culture, Media & Sport.\textsuperscript{11}

### 3.5 Department of Health

Under the *Local Government (Miscellaneous Provisions) Act 1982*,\textsuperscript{12} the Department of Health has policy responsibility for byelaws relating to the practice of acupuncture and businesses providing tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.\textsuperscript{13}

### 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.

\textsuperscript{8} See DCLG, *Local government legislation: byelaws*, September 2012
\textsuperscript{9} See DEFRA, *Byelaws powers for local authorities*, March 2009
\textsuperscript{10} ODPM, *Local authority byelaws in England: a discussion paper*, April 2006
\textsuperscript{11} See DCMS, *Local byelaws*
\textsuperscript{12} See also Schedule 6 and s.120 of the *Local Government Act 2003*.
\textsuperscript{13} 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

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.\(^{14}\) Sections 129-135 of the *Local Government and Public Involvement in Health Act 2007* permitted 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.\(^ {15}\) The Government’s response was published in October 2009, signalling its intention to proceed with these proposals.\(^ {16}\) 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.\(^ {17}\)

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,\(^ {18}\) the Labour Government did not bring forward regulations in advance of the 2010 General Election. As a result, no change has yet been made to the system whereby the Secretary of State must confirm byelaws.

4.1 Proposed new arrangements: 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) 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,  

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\(^{15}\) DCLG, *Communities in control: real people, real power - the making and enforcement of byelaws:* consultation, August 2008  

\(^{16}\) DCLG, *Communities in control: real people, real power – Government response to the making and enforcement of byelaws*, October 2009  

\(^{17}\) George Jones and John Stewart, “Getting by with byelaws” *Municipal Journal*, 7 May 2009, pp26-7  

\(^{18}\) The *Local Government and Public Involvement in Health Act 2007* (Commencement No. 9) Order 2010, SI 2010/112
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.

### 4.2 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”. 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”. However, at the time of writing no proposals have been brought forward. The most recent Parliamentary Question on the subject was asked in November 2013:

**Henry Smith:** To ask the Secretary of State for Communities and Local Government when he intends to bring forward legislative proposals on new regulations to bring into effect a simplified by-law process for local authorities.

**Brandon Lewis:** We intend before the end of this parliamentary Session to lay regulations simplifying councils’ byelaw making processes.

### 5 Reform of byelaw procedure: Wales

The Assembly 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.

At the time of writing, the Act has not yet been brought into force.

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.

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19 DCLG, *Grant Shapps: Bypass Whitehall and scrap outdated byelaws*, 31 August 2010

20 HCDeb 5 Nov 2013 c148W
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 out with the legislative competence of the Assembly. In its judgment on 21 November 2012, the Supreme Court found in favour of the Assembly.