



Communities in control: real people, real power

The making and enforcement of byelaws

Consultation



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Chapter 1

The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 We now need to consult further about a number of policy commitments and are thus planning a series of *Communities in control* consultation papers. This paper is the second in that series. It invites views on proposals to make regulations under the Local Government and Public Involvement in Health Act 2007 to provide new procedures for the making and enforcement of certain byelaws in England.

About this consultation

- 1.3 The proposals are about changing the way in which byelaws are made and enforced – not about changing what councils can legislate for. The intention behind the new regime is that councils and their communities will find byelaws easier to understand, more straightforward and less bureaucratic to make and easier to enforce in an effective way.
- 1.4 Chapter 2 of this document seeks views on the proposed new procedure which will enable authorities to make certain byelaws without the need for scrutiny by central government and confirmation by the Secretary of State.
- 1.5 Chapter 3 of this document seeks views about proposals for a new enforcement regime for byelaws, moving away from the current method of enforcement through the Magistrates' Courts and towards a fixed penalty regime.

Who we are consulting

- 1.6 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from councils engaged in the byelaw-making process and those involved in the enforcement of byelaws. **The consultation period runs for 12 weeks to 20 November 2008.**

How to respond

- 1.7 Your response must be received by **20 November 2008** and may be sent by email or post to:

Vanita Patel
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU
email: byelaws@communities.gsi.gov.uk

If you are replying by email please title your response 'Response to Byelaws consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.8 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will underpin the new byelaw making and enforcement regime.
- 1.9 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's web site at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.10 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. (These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.)

- 1.11 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.12 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.13 The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.14 The UK Government has adopted a code of practice on consultations. Please see **Annex B** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.15 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk

In context – previous consultation

- 1.16 The discussion paper *Local Authority Byelaws in England: Procedures for making, confirming and enforcing byelaws*, issued by the (then) Office of the Deputy Prime Minister in April 2006, emphasised that the vast majority of byelaws deal with truly local matters in local spaces such as parks, beaches, walkways and public places such as libraries and museums. The document proposed that continuing direct central government involvement in such matters was unnecessarily bureaucratic and proposed that the role of central government should in future be confined to publishing good practice guidance and model byelaws to assist authorities in their byelaw-making role.

- 1.17 The April 2006 discussion established a clear consensus that byelaws currently confirmed by Communities and Local Government should no longer require confirmation by central government before they can be enacted and enforced. It also established the view that there was no need for central government to take a direct role in many of the other byelaws which are made by authorities and which are confirmed by other government departments.
- 1.18 Further, it showed widespread support for the view that the enforcement of byelaws should be through the mechanism of fixed penalty notices as an alternative to enforcement through the Magistrates' Courts – widely viewed as a resource-intensive process.
- 1.19 Following the consultation, the Local Government White Paper, *Strong and Prosperous Communities* published in October 2006 announced that the Secretary of State's role in confirming certain byelaws will end. This proposal accorded with the government's key aim – now in the process of being implemented – of placing decision making on local matters in the hands of authorities and local people. The White Paper also confirmed the view that enforcement of byelaws should be by fixed penalty notice, in the same way as other regimes deal with low-level public nuisances similar to those covered by byelaws.
- 1.20 All byelaws currently confirmed by Communities and Local Government will be included in the regulations. In addition, certain other byelaws confirmed by other government departments will also be included.
- 1.21 The government proposes that some local byelaws should still require confirmation by central government – the reason for this is explained later in this document.

Chapter 2

The byelaw-making process

What is a byelaw?

- 2.1 A byelaw is a law which is made by a body, such as a local authority, under an enabling power established by an Act of Parliament and which has been confirmed by the Secretary of State. 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.
- 2.2 Byelaws are not considered a suitable regulatory mechanism in cases where there are already express powers in primary legislation for dealing with an issue which is causing concern. Where there are no such powers, byelaws should only be considered when all other avenues, such as voluntary schemes, have been exhausted.
- 2.3 As a general principle, it is for an authority to decide the necessary and appropriate byelaws for its area. Authorities are expected to consult any interested parties and to consider their views before making and advertising byelaws.

Legislative background

- 2.4 The two Acts of Parliament governing the making and enforcement of byelaws are the Local Government Act 1972 ("the 1972 Act") and the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). Part 6 of the 2007 Act inserts new provisions into the 1972 Act which, once commenced, will enable the Secretary of State to make regulations which simplify the making and enforcement of local byelaws.
- 2.5 Section 129 of the 2007 Act inserts new section 236A (alternative procedure for certain byelaws) into the Local Government Act 1972. Once section 129 has been commenced, it will give the Secretary of State power to make regulations under new section 236A prescribing the byelaws which can be made using the alternative procedure provided for in the regulations, the substance of which we are consulting on now, rather than the current procedure under section 236 of the 1972 Act and other legislation.

- 2.6 Sections 130 of the 2007 Act inserts new sections 237A-C and 237F into the 1972 Act. After commencement, section 237A (fixed penalty notices) will enable the Secretary of State to make regulations prescribing classes of byelaws which may be enforced by means of fixed penalty notices. Section 237B (amount of fixed penalty) enables the Secretary of State to make provision, in regulations, about the amount of fixed penalty required to be paid pursuant to a fixed penalty notice.

Proposed content of the new regulations

- 2.7 The new regulations will specify the byelaws for which the Secretary of State's confirmation will no longer be required and will set out the new procedures for making byelaws at a local level; including setting out the stages of consultation which should be undertaken at local and other levels during the preparation of byelaws.
- 2.8 It is proposed that the new procedure will extend to all authorities responsible for making the particular byelaws specified in regulations. The list appears below. The majority of byelaws included in the regulations will be made by local authorities, including parish councils. There are some exceptions, for instance certain byelaws made by Transport for London and those made by Passenger Transport Authorities which, under the current arrangements, are confirmed by the Secretary of State for Transport.

The role of government departments in confirming byelaws

- 2.9 All byelaws currently confirmed by Communities and Local Government will be included in the regulations. Several other government departments with byelaw confirming responsibilities also intend to relinquish this role, subject to the outcome of this consultation.
- 2.10 To ensure that the new regulations can clearly describe which byelaws will be subject to the new procedures (and so ensure certainty about which byelaws will continue to be subject to central government confirmation and enforcement through the Magistrates' Courts), the classes of byelaw to which the new arrangements will apply can be described in a number of different ways. They can be described by reference to one or more of: the enabling power for the byelaws; their subject matter; the authority empowered to make the byelaws and; the authority or person by whom byelaws are confirmed.

Table 1: Full list of byelaws which it is proposed should no longer require confirmation by the Secretary of State.		
Confirming Department	Enabling Power	Subject Matter
Communities and Local Government	Section 235 of the Local Government Act 1972	Good rule and government and the prevention of nuisances, including 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 Acts 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 opening hours, maintaining cleanliness, preventing obstruction, use of water taps and prevention of fires.
	Section 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.
Department for Transport	Section 35 of the Highways Act 1980	Walkways – conduct of public, closing times, placement of structures.
	Section 68 of the Town Police Clauses Act 1847, as incorporated with the Public Health Act 1875	Hackney carriages, including conduct of their drivers and proprietors.

Table 1: Full list of byelaws which it is proposed should no longer require confirmation by the Secretary of State. (continued)		
Confirming Department	Enabling Power	Subject Matter
	Section 6 of the Town Police Clauses Act 1889, as incorporated with the Public Health Act 1875	Horse drawn omnibuses.
	Paragraph 26 of Schedule 11 of the Greater London Authority Act 1999	Regulating the use, and working of, and travel and behaviour on Transport for London's railways and railway premises.
	Paragraph 27 of Schedule 11 of the Greater London Authority Act 1999	Regulating the use of any landing place vested in or operated by Transport for London.
	Section 46 of the Croydon Tramlink Act 1994	Regulating the use and working of, and travel and behaviour on the Croydon Tramlink premises and facilities.
	Section 25 of the London Transport Act 1969	Regulating the use and working of, and behaviour on, Transport for London's road transport garages, depots, bus stations, shelters, other premises and approaches.
	London County Council (Tunnel and Improvements) Act 1938	Regulating the use of the Blackwall Tunnels and their approaches.
	Section 54 of the Thames Tunnel (Rotherhithe and Ratcliff) Act 1900	Regulating the use of the Rotherhithe Tunnel
	Section 23 of the Metropolitan Board of Works (Various Powers) Act 1885	Regulating the use and working of, and behaviour on the Woolwich Ferry.
	Section 59 of the Leeds Supertram Act 1993 and Section 62 of the Greater Nottingham Light Rapid Transit Act 1994	Regulating behaviour on various local light railways and tramways.

Table 1: Full list of byelaws which it is proposed should no longer require confirmation by the Secretary of State. (continued)

Confirming Department	Enabling Power	Subject Matter
Department for Culture, Media and Sport	Public Libraries and Museums Act 1964	Defining acceptable behaviour inside libraries and museums.
Department of Health	Part VIII of the Local Government (Miscellaneous Provisions) Act 1982	Hygiene and cleanliness of acupuncture services and businesses providing tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.
Department for the Environment, Food and Rural Affairs	Sections 20, 21(4) and 106 of the National Parks and Access to the Countryside Act 1949	Local nature reserves.

Consultation Question 1: Do you agree with the list of byelaws which we propose should no longer require Secretary of State confirmation?

Issues about particular byelaw making powers

Byelaws which apply to libraries

2.11 The Department for Culture, Media and Sport has considered the Secretary of State's duty to superintend the public library service and secure the proper discharge by local authorities of their function to provide a comprehensive and efficient library service. The Department for Culture, Media and Sport does not consider that the new procedures for local authorities making and enforcing public library byelaws will impact upon this duty. Legislative change will be required however – the new procedures will require an amendment to be made to Section 19 of the Public Libraries and Museums Act 1964 – removing the requirement for the Secretary of State to confirm the byelaws made by the local authority.

Byelaws made under the Highways Act

2.12 The Secretary of State has powers – under Section 35 of the Highways Act 1980 – to confirm walkway byelaws made by local authorities, a walkway being defined as a footpath under or over parts of a building. Requests for confirmation cover prohibitions on actions such as the display of advertising, notices or placards, spitting/urinating, animal fouling, consumption of alcohol and distribution of printed material.

- 2.13 Ministerial confirmation was required in the past because the byelaws relate to criminal offences enforced through the Magistrates' Courts. A move to local authorities making byelaws themselves and the enforcement of those byelaws through fixed penalty notices is much more in keeping with the general approach of devolving responsibility for byelaws to authorities.
- 2.14 There are clear procedures in the Highways Act 1980 that authorities must follow in the making of byelaws. In addition, model byelaws were produced by the Department for Transport in 1988. These, as appropriately updated, will continue to apply.

Continued confirmation

- 2.15 The 2006 discussion paper explained that central government confirmation of some byelaws would be retained. For instance, byelaws confirmed by the Department for the Environment, Food and Rural Affairs include what can be controversial byelaws about local fisheries management or countryside recreation. In addition, some byelaws which apply to transport modes are made by transport authorities such as airport authorities, which are not accountable to the community in the same way that other authorities are. We propose that these byelaws continue to require central confirmation before they can be enacted.

Consultation Question 2: Do you agree that certain byelaws should continue to require confirmation by the Secretary of State?

Consultation on byelaws

- 2.16 Local people should be clear about the local laws that apply in public spaces and should have every opportunity to have their say on what these rules should be. With the removal of central government's confirming role, robust procedures should be put in place to ensure that thorough local consultation is undertaken before new byelaws are introduced.
- 2.17 This is why, in prescribing the new byelaw procedures, Section 129 of the Local Government and Public Involvement in Health Act empowers the Secretary of State to make provision for the consultation process that authorities must follow before a byelaw is made and enacted and on the local publicity after a new byelaw has been made.

Making byelaws

2.18 The present procedure for making byelaws is as follows:

Step 1 – The authority determines whether or not there is a need to make the byelaw and whether the authority has the power to make it. In doing so it must ensure that the byelaw does not duplicate or contradict existing legislation.

Step 2 – The authority consults interested parties about the proposed byelaw.

Step 3 – The authority makes and seals the byelaw.

Step 4 – The authority advertises the byelaw, placing an advert in a local newspaper notifying the public of its intention to apply for confirmation of the byelaw and holds the byelaw on deposit for at least one month. The authority invites affected persons to make representations to the Secretary of State.

Step 5 – The authority sends the sealed byelaw to the Secretary of State to have it confirmed.

Step 6 – The Secretary of State makes her decision on whether or not to confirm the byelaw.

Step 7 – The byelaw is confirmed.

Step 8 – The byelaw comes into force.

Proposal for new procedure

2.19 We propose to put in place a two-stage process for byelaw preparation and consultation. This will largely follow the procedures put forward in the 2006 discussion paper which were strongly supported. The new Regulations will require the byelaw-making authority to prepare and consult on byelaws as follows:

Stage 1 – preparing the draft byelaw

2.20 The proposed procedure for the making of byelaws is as follows:

Step 1 – The authority determines whether or not there is a need to make the byelaw and whether the authority has the power to make it. In doing so it must ensure that the byelaw does not duplicate or contradict existing legislation.

Step 2 – The authority consults interested parties about the proposed byelaw.

Step 3 – The authority drafts the byelaw.

- 2.21 During stage 1 the byelaw making authority would be required to conduct an assessment of the need and fitness for purpose of the proposed byelaw. The assessment should cover much of the information which current Departmental guidance requests that authorities should include when submitting a byelaw for provisional approval. This includes preparing:
- An explanation of the nature, extent and incidence of the problem and the reasons why the authority considers that a byelaw is the best way to address that problem.
 - A summary of consultation with interest groups and local people which has fed into the preparation of the byelaw.
- 2.22 Where necessary, government departments could continue to be involved in the byelaw making process as consultees. For example, at present byelaws for the seashore are currently confirmed by Communities and Local Government, but only after seeking the approval of the Department for Transport. This allows for strategic consideration about the wider use of the seashore. Following implementation of the new byelaw Regulations, involvement by Communities and Local Government would no longer be required – however we envisage that the Department for Transport would have the opportunity to make representations to the authority as part of the authority's consultation of interested parties during Stage 1.
- 2.23 Such an approach might also be appropriate for byelaws made, for instance, by transport authorities, so that strategic considerations about similar legislation applying to the transport network in the locality can be fed into the byelaw making process.
- 2.24 Existing guidance on byelaws would be supplemented with guidance on consultation, which authorities must have regard to. For instance, when drafting byelaws about the flying of model aircraft the views of local and national interest groups could be sought.
- 2.25 The Regulations will require that the information gathered in stage 1 of the consultation process should be made available for public scrutiny, alongside the draft byelaw, as prescribed in stage 2.

Stage 2 – Consultation and making the byelaw

Step 4 – The 21-day minimum consultation process begins.

Step 5 – At the beginning of stage 2 of the consultation period the authority advertises the draft byelaw, placing an advert in a local newspaper notifying the public of its intention to make the byelaw and holds the draft byelaw on deposit for at least 21 days.

2.26 The consultation process would, as a minimum, include the following elements:

- The authority would notify local people of the draft byelaw and make available the information covered by the assessment of need prepared during stage 1. As a minimum this notification would be through publication in a local newspaper and public notices posted at the location to which the byelaw applies. Other media could also be used to publicise the draft byelaw where the authority feels this would be of value.
- The authority would provide opportunities for inspection of the text of the draft byelaw, at council offices and in public notices.
- The authority would provide local people with the means and opportunity to comment upon the draft byelaw
- The authority would provide the opportunity for debate in a public forum locally

2.27 The minimum public consultation period for each byelaw would be 21 days. This is similar to other requirements to consult on local issues such as planning applications.

2.28 It is proposed that the new Regulations will also specify that, once the consultation period has concluded, public notice of the new byelaw would be given through public notices posted at the location to which it is intended that the byelaw will apply and through other media – such as the authority’s website – as necessary.

Step 6 – After the consultation period has come to an end, the authority will make a decision on whether to make the byelaw and, if so, whether any modifications are required. This decision will take into account any representations received on the draft byelaw during the consultation period. It is proposed that the Regulations will provide that if, at this stage, the authority decides to make an amendment to the byelaw which is more than just a minor modification they will need to go back to step 4 and consult on the byelaw, as amended. What constitutes a minor modification will be covered in guidance.

Step 7 – The authority makes and seals the byelaw. The byelaw comes into force on the date specified in the byelaw. The Regulations will provide that if no coming into force date is specified in the byelaw, the byelaw will come into force 21 calendar days after the date it was made and sealed by the authority. Once the byelaw has been made, the authority will be required to give public notice of the byelaw, including notice of the date on which the byelaw will come into force, through public notices posted at the location to which the byelaw applies. The new byelaw should also be publicised, where possible, on the authority’s website.

Consultation Question 3: Do you agree with our proposed seven step outline to make a new byelaw?

Consultation Question 4: Is the proposed statutory 21-day consultation period the right length of time for consultation?

Consultation Question 5: Do you agree with our proposal that the council will have to publicise the new byelaw once it comes into force?

Resolving challenges

2.29 If during the consultation period an objection is made to the byelaw in whole or in part, then it is for the authority to take a view on how to proceed. The authority may wish to note the objection but proceed with the byelaw. The authority may wish to acknowledge that the objection is valid and, at the end of the consultation period, decide to scrap or amend the draft byelaw. As explained above, should the authority decide to make more than just minor amendments to the draft byelaw, they will need to consult on the draft byelaw as amended.

Consultation Question 6: Do you agree with our proposals on resolving challenges?

Chapter 3

Enforcement of byelaws

Enforcement through Fixed Penalty Notices

- 3.1 Responses to the April 2006 discussion document showed strong support among authorities for enforcement by fixed penalty notices. Fixed penalty notices were considered a practical alternative to enforcement of byelaws through the Magistrates' Courts, which is resource intensive. Local communities should be confident that any nuisance behaviour which spoils their enjoyment of public spaces can be tackled quickly and efficiently – fixed penalty notices are seen as instrumental in achieving this. We are proposing that for certain classes of byelaw, an authority will be able to determine, when making a byelaw in that class, that the preferred method of enforcement is by fixed penalty notice.
- 3.2 These proposals are in line with current overarching Home Office policies on developing coordinated approaches to tackling nuisance behaviour.
- 3.3 Even if authorities were to determine that fixed penalty notices were the preferred method of enforcement for a new byelaw, this would not preclude them from choosing to enforce the byelaw through the Magistrates' Courts in particular circumstances, should they so wish. It may, for example, be appropriate to use the Magistrates' Court route for repeat offenders.
- 3.4 There are two main types of fixed penalty notice scheme which we are proposing to make available. In the first type, a recipient has a set number of days (the statutory enforcement period or SEP) in which to pay the penalty; there is usually a discount for early payment. If he/she fails to do so, the recipient is prosecuted for the original offence; this also allows those who wish to contest it, to have their case heard in court. Many local authority fixed penalty notice schemes follow this model. In the second type, a recipient can either pay the penalty or request to have their case heard in court within the SEP. Failure to do either normally results in a fine being registered by a Magistrates' Court automatically against an offender; under the Penalty Notice for Disorder Scheme for example, the fine is one and half times the penalty amount. Penalty amounts are proportionate to the offence and generally adhere to the average Magistrates' Court fine.
- 3.5 Section 130 of the Local Government and Public Involvement in Health Act 2007 (which inserts new sections into the 1972 Act) makes provision for authorised officers of authorities to issue fixed penalty notices where they believe that a person

has committed an offence against a byelaw which belongs to a class specified in the fixed penalty notice regulations. Such an authorisation must be in writing. Where local authorities engage contractors to issue fixed penalties they should ensure that background checks are carried out to determine their suitability and capability and ensure that the contractors receive adequate training and have a full understanding of any locally set procedures or policies before they begin issuing fixed penalties.

- 3.6 Employees of parish councils and other persons (including their employees) authorised by a parish council will be able to issue fixed penalties for byelaws that the parish council chooses to enforce through fixed penalty notices. The regulations will require anyone so authorised by a parish council to have first successfully completed an approved course by a training provider recognised by the Secretary of State. It is also important that background checks are carried out and that anyone authorised to issue fixed penalties on behalf of parish councils is made aware of policies and procedures. Parish councillors should not be authorised under this provision.

Legislative provisions

- 3.7 Section 130 (Fixed penalties for breach of byelaws) of the Local Government and Public Involvement in Health Act 2007 inserted new sections 237A-C and 237F into the Local Government Act 1972. Once section 130 is commenced, new section 237A will enable the Secretary of State to make regulations which prescribe classes of byelaws which may be enforced, under s237A, by fixed penalty notice.

Confirming Department	Enabling Power	Subject Matter
Communities and Local Government	Section 235 of the Local Government Act 1972	Good rule and government and the prevention of nuisances, including 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 Acts Amendment Act 1907	Use of the seashore and promenades including: bait digging, fishing, horse-riding and interference with life-saving equipment.

Table 2: Byelaws which it is proposed may attract a fixed penalty notice as an enforcement measure. (continued)		
Confirming Department	Enabling Power	Subject Matter
	Section 231 of the Public Health Act 1936	Public bathing.
	Section 60 of the Food Act 1984	Markets, including opening hours, maintaining cleanliness, preventing obstruction, use of water taps and prevention of fires.
	Section 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.
Department for Transport	Section 35 of the Highways Act 1980	Walkways – conduct of public, closing times, placement of structures.
	London County Council (Tunnel and Improvements) Act 1938	Regulating the use of the Blackwall Tunnels and their approaches.
	Section 54 of the Thames Tunnel (Rotherhithe and Ratcliff) Act 1900	Regulating the use of the Rotherhithe Tunnel
	Section 23 of the Metropolitan Board of Works (Various Powers) Act 1885	Regulating the use and working of, and behaviour on the Woolwich Ferry.
Department for Culture, Media and Sport	Public Libraries & Museums Act 1964	Defining acceptable behaviour inside libraries and museums.

3.8 There is a presumption that the byelaws listed in the table above will be subject to enforcement under the fixed penalty notice regime. The table below lists byelaws where we would welcome comments about both the principle of including the byelaws in the fixed penalty notice regime and the level of fine that would be deemed appropriate (taking account of the considerations outlined in paragraphs 3.9 to 3.12).

Table 3 – Department of Transport byelaws where views are sought about whether fixed penalty notices are the most appropriate form of enforcement.		
Confirming Department	Enabling Power	Subject Matter
Department for Transport	Section 68 of the Town Police Clauses Act 1847, as incorporated with the Public Health Act 1875	Hackney carriages, including conduct of their drivers and proprietors.
	Section 6 of the Town Police Clauses Act 1889, as incorporated with the Public Health Act 1875	Horse drawn omnibuses.
	Paragraph 26 of Schedule 11 of the Greater London Authority Act 1999	Regulating the use, and working of, and travel and behaviour on Transport for London’s railways and railway premises.
	Paragraph 27 of Schedule 11 of the Greater London Authority Act 1999	Regulating the use of any landing place vested in or operated by Transport for London.
	Section 46 of the Croydon Tramlink Act 1994	Regulating the use and working of, and travel and behaviour on the Croydon Tramlink premises and facilities.
	Section 25 of the London Transport Act 1969	Regulating the use and working of, and behaviour on, Transport for London’s road transport garages, depots, bus stations, shelters, other premises and approaches.
	Section 59 of the Leeds Supertram Act 1993 and Section 62 of the Greater Nottingham Light Rapid Transit Act 1994	Regulating behaviour on various local light railways and tramways.

Consultation Question 7: Do you agree that a Fixed Penalty Notice is the most effective form of enforcement for new transport byelaws?

Amount of fixed penalty

- 3.9 Once section 130 of the 2007 Act is commenced, new section 237B of the 1972 Act will enable authorities to specify the amount of fixed penalty for breach of those byelaws for which enforcement through fixed penalty notices is available i.e. for breach of those byelaws which are specified in the new Regulations. The authority may specify different amounts in relation to different byelaws. If an authority does not make use of this power, the 2007 Act provides that a standard default amount of £75 applies. However the Act also enables the Secretary of State to make Regulations which specify a range within which the amount of fixed penalty specified by the authority (as payable for breach of those byelaws) must fall. Authorities will then be able to select a value for a fixed penalty from within this range.
- 3.10 It is proposed that one set of Regulations will be made which specifies both the byelaws to which the fixed penalty notice provisions apply and the range within which the amount of fixed penalty payable for breach of those byelaws must fall.
- 3.11 We propose that the level of fixed penalty for breaches of byelaws should be in line with penalties for similar types of local nuisance behaviour, for example, penalties for certain offences under the Clean Neighbourhoods and Environment Act 2005. The Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006 set out the ranges within which fixed penalties for certain offences, including offences under that Act, must fall. For offences carrying a default amount of £75, those Regulations specify a range of £50 to £80. On this basis it is proposed that our Regulations should also enable authorities to set the level of fixed penalty notices at between £50 to £80. This reflects the fact that all the byelaws which it proposed will be specified in the Regulations, as enforceable by way of fixed penalty notice, address similar types of nuisance activity, ensuring a consistency of approach in the enforcement of local nuisances.
- 3.12 As explained above, where the authority does not specify the penalty for breach of a byelaw, the legislation provides for a default amount of £75. The Secretary of State has powers to change this default amount as necessary so that it remains in line with penalties for similar level offences.

Consultation Question 8: Do you agree that the default Fixed Penalty amount should be £75?

Retaining the Magistrates' Courts as an enforcement option

3.13 It is acknowledged that authorities may wish to enforce certain byelaws through the Magistrates' Courts, where the breach of the byelaw could have more serious consequences such as the creation of the risk of personal injury (through damage to a structure or through the removal or damage of safety equipment).

London Borough Councils

3.14 London borough councils already have the power to enforce byelaws through fixed penalty notices. The London Local Authorities Act 2004 gave new powers to London borough councils to tackle a wide range of offences by giving them the power to make the breach of any byelaws a fixed penalty offence.

3.15 Sections 15 to 18 of the 2004 Act give London borough councils the power, in lieu of issuing criminal proceedings, to issue a fixed penalty notice for the breach of any byelaws made by the council under any enactment. Before London borough councils can exercise the power to issue a fixed penalty notice, the council has to have set the level of the fixed penalty notice and to notify the Secretary of State of those levels. The Secretary of State then has one month to object to the levels set by the borough council and may set the level herself if she considers the proposed levels excessive.

3.16 We propose that, since a statutory regime for enforcement through fixed penalty notices is already available to London borough councils, the new byelaws enforcement regime should not apply to London borough councils who will instead continue to operate their enforcement regime under the 2004 Act. We propose to make provision in the fixed penalty Regulations to make it clear that the new powers do not apply to London borough councils. However, where applicable other byelaw making authorities in London will be able to use the new enforcement regime.

Consultation Question 9: (for London Borough councils in particular) Do you agree that the proposed national byelaws enforcement regime should exclude London Borough councils?

Chapter 4

Implementing the new process

Transitional arrangements

- 4.1 It is possible that when the new regulations come into force some authorities will already have submitted sealed byelaws to the relevant government department for scrutiny and confirmation by the Secretary of State under the existing regime.
- 4.2 We propose that byelaws that have made it to that stage should be dealt with under the existing system, that is, confirmed by the Secretary of State. Enforcement through the proposed new fixed penalty notice regime will not be available for any byelaw made under the existing system.
- 4.3 If an authority is in the process of making a byelaw, but has not sealed it, the byelaw making process will have to restart from the beginning when the new regime comes into force. This is because without the element of scrutiny by central government, the process of scoping, consideration and consultation prior to sealing becomes more important.

Revoking byelaws

- 4.4 Normally, where an authority wishes to revoke a byelaw it may do so by making another byelaw under the same enabling power which revokes the old byelaw. However, at present, where an authority wishes to revoke an existing byelaw which was made under a power which has since been repealed (and has not been re-enacted) it is necessary for the Secretary of State to make an Order which revokes the byelaw. This process is unnecessarily burdensome and time-consuming and, as such, provision was made in the 2007 Act whereby, in such cases, the authority may instead make a byelaw under new section 236B (Revocation of byelaws) of the Local Government Act 1972 to revoke an existing byelaw. However, byelaws made under this section will still require confirmation by the relevant Government department. This new power will be available to the authorities to which new section 237B applies once Part 6 (Byelaws) of the 2007 Act has been commenced. The authorities to which that section applies are: a local authority; the Greater London Authority; Transport for London; and a metropolitan county passenger transport authority.
- 4.5 Further information about this new power will be given in the guidance which we intend to issue alongside the Regulations (see below).

Guidance

- 4.6 Government departments will continue to maintain, expand and make available guidance on the making of byelaws and to provide model sets of byelaws to assist drafting. The Secretary of State, under new section 237E of the 1972 Act, also has the power to issue statutory guidance on the alternative procedure which will apply to certain byelaws and on the use of fixed penalty notices. Communities and Local Government intends to issue guidance under this section which will accompany the Regulations.

Conclusions

- 4.7 Our proposals aim to simplify and streamline the process of making and enforcing byelaws so that decisions on local byelaws will rest firmly with authorities and their communities.
- 4.8 Finally, we do not see any need for a specific ‘appeals’ role for the Secretary of State. Such a role would undermine the very deregulatory and devolutionary principles which underlie the proposals in this consultation document.

Annex A

List of consultation questions

Chapter 2: The byelaw making process

- Question 1 Do you agree with the list of byelaws which we propose should no longer require Secretary of State confirmation?
- Question 2 Do you agree that certain byelaws should continue to require confirmation by the Secretary of State?
- Question 3 Do you agree with our proposed seven step outline to make a new byelaw?
- Question 4 Is the proposed statutory 21 day consultation period the right length of time for consultation?
- Question 5 Do you agree with our proposal that the council will have to publicise the new byelaw once it comes into force?
- Question 6 Do you agree with our proposals on resolving challenges?

Chapter 3: Enforcement of byelaws

- Question 7 Do you agree that a Fixed Penalty Notice is the most effective form of enforcement for new transport byelaws?
- Question 8 Do you agree that the default Fixed Penalty amount should be £75?
- Question 9 Do you agree that the proposed national byelaws enforcement regime should exclude London Borough councils?

Annex B

Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The consultation criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at:
www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

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