

REPORT OF MONITORING OFFICER

SUBJECT: BYELAWS ACT 2012

This is an interesting piece of legislation in that it received the Royal assent on 29th November 2012 and is only in force since the 31st March 2015. There had been jurisdictional issues between London and Cardiff.

It is the first piece of pure Welsh legislation, which has resulted in litigation in the Supreme Court over “competency”, which was ultimately resolved in favour of the Welsh Government.

The Act is intended to simplify the passing and revocation of bye laws in Wales.

The effect of the Local Government Byelaws (Wales) Act 2012 is that National Park Authorities in Wales are to be able to make byelaws without the need for approval from the Welsh Ministers or a Secretary of State.

The Act was not intended to be a controversial or seismic piece of legislation. However, the challenge in the Supreme Court raised some fascinating questions of constitutional law. The case is also an excellent test of how devolution is understood – it covers the devolution of primary legislative powers to the National Assembly, it covers the transfer of secondary legislative powers to the Welsh Ministers and then considers how those powers can filter down to the level of county councils, county borough councils and community councils in Wales. And as a note of reassurance, if you sometimes get mixed up between the Welsh Ministers, the Welsh Government and the National Assembly then you are in good company – some of the Supreme Court judges fell into the same trap during the course of this hearing.

The National Park Authorities are “legislating Authorities” for the purpose of the passing and revocation of bye laws. So they can do it individually.

The Act lays down two broad categories of a statute and specifies who should approve the byelaw then that specified person must approve the byelaw.

If the statute is silent as to who should approve the byelaw, then either the Welsh Ministers or the Secretary of State may approve the byelaw.

The byelaws specified in the Act that are within category 1 posed no problem – the byelaws had been carefully chosen so that the specified persons were the Welsh Ministers and the main purpose of the Act is to remove the need for the approval of the Welsh Ministers.

However, many byelaws specified in the Act are within category 2 which means that the power of approval is exercised by the Welsh Ministers and the Secretary of State concurrently – in other words it is open to either the Welsh Ministers or the Secretary of State to exercise approval. It need not be both.

The primary purpose of the Act is to remove the need for the approval of Welsh Ministers (achieved by section 6) as part of an overall streamlining and modernising of the way in which byelaws are made in Wales. While there was no problem with removing the Welsh Ministers' powers of approval, where did this leave the Secretary of State's concurrent powers of approval? Could the National Assembly pass an Act which took away the approval powers of both the Welsh Ministers and the Secretary of State. This was the thorny problem for the Supreme Court. It was resolved in favour of the Welsh Government.

Thus there are some byelaws which do not require Ministerial confirmation and still some that do.

The Act also clearly sets out in section 8 the formalities to go through to enact successfully byelaws.

Links to an Explanatory Note together with the text of the Act can be found below:

http://www.legislation.gov.uk/anaw/2012/2/pdfs/anaw_20120002_en.pdf

<http://www.legislation.gov.uk/anaw/2012/2/notes>

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