

REPORT TO: CABINET MEMBER - CORPORATE SERVICES
DATE: 9 DECEMBER 2009
SUBJECT: GOVERNMENT'S RESPONSE TO THE CONSULTATION ON THE DISCUSSION PAPER - THE MAKING AND ENFORCEMENT OF BYELAWS
WARDS AFFECTED: ALL
REPORT OF: CAROLINE ELWOOD, LEGAL DIRECTOR
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EXEMPT/CONFIDENTIAL: NO

PURPOSE/SUMMARY:

To apprise Members of the Government's response to the Consultation on the Discussion Paper "The Making and Enforcement of Byelaws" in respect of proposals to enable Local Authorities to make certain Byelaws without the need for scrutiny by the Secretary of State and for a new enforcement regime for Byelaws.

REASON WHY DECISION REQUIRED:

No decision is required on this matter other than to note the Government response to the consultation.

RECOMMENDATION:

That the Government response to the Consultation on the Discussion Paper "The Making and Enforcement of Byelaws" be noted.

KEY DECISION: No

FORWARD PLAN: Not appropriate

IMPLEMENTATION DATE: Following the expiry of the "call-in" period for the Minutes of this meeting.

ALTERNATIVE OPTIONS:

None

IMPLICATIONS:**Budget/Policy Framework:** None at this stage**Financial:** There are no financial implications arising directly from this report which is for information only.**Legal:** The report sets out the Government's intentions with regard to its proposals to implement the Byelaws Provisions contained in the Local Government and Public Involvement in Health Act 2007 to make Byelaws easier to make, understand and enforce.**Risk Assessment:** Not applicable.**Asset Management:** Not applicable.**CONSULTATION UNDERTAKEN/VIEWS**

Legal

CORPORATE OBJECTIVE MONITORING:

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability	√		
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy	√		
8	Children and Young People		√	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

DCLG - "Government response to the making and enforcement of Byelaws" - October 2009

SEFTON MBC

GOVERNMENT RESPONSE TO BYELAWS CONSULTATION

1.0 BACKGROUND

- 1.1 At the meeting on 12 November 2008, the Cabinet Member considered the report of the Legal Director informing of the DCLG Consultation Paper “The Making and Enforcement of Byelaws” in respect of proposals to enable Local Authorities to make certain Byelaws without the need for scrutiny by the Secretary of State and for a new enforcement regime for Byelaws and to formulate a response.
- 1.2 At the meeting on 12 November 2008 it was resolved that the DCLG be advised that:-
- (1) The proposals to enable Local Authorities to make certain Byelaws without the need for scrutiny by the Secretary of State be welcomed;
 - (2) the proposals for the enforcement of Byelaws through Fixed Penalty Notices be welcomed;
 - (3) replies to the Consultation Questions are in the affirmative.
- 1.3 Responses to the Consultation were requested by 20 November 2008 and 533 responses were received by the DCLG, including Sefton’s. Sefton was one of 49 District or Borough Councils to respond.
- 1.4 On 28 October 2009, the DCLG published the Government’s response to the Consultation. The full response can be found on the DCLG’s website www.communities.gov.uk.

2.0 SUMMARY OF THE GOVERNMENT’S RESPONSE TO THE CONSULTATION

- 2.1 The following is a summary of the Government’s response to the Consultation:-
- (a) The Government agrees that as many Byelaws as possible should be devolved to Authorities. Where the Secretary of State’s role in confirming local Byelaws brings added value to the process, it should continue.
 - (b) The Government intends to adopt the outline and procedure for making Byelaws as set out in the Consultation Paper.
 - (c) The Government has concluded that the minimum consultation period for new Byelaws should be 28 days.

- (d) The Government intends to make regulations specifying the minimum requirements for public notice of new Byelaws including:-
- depositing a copy of the Bye-Law at the Authority's Principal Office;
placing signs summarising the Bye-Law in conspicuous positions on or near the land in respect of which they apply;
publishing in a public newspaper a Notice that the Bye-Law has been made and stating the place at which it may be inspected and copies obtained; and, where applicable, publishing the Notice on the Authority's website. The Government intends to require District Councils to notify Parish and Town Councils of any new Byelaws they make which apply to land within that Parish or Town.
- (e) The Government agrees the general principle that it is for the Local Authority to decide the necessary and appropriate Byelaws for its area. Provided that there is no legal problem and no conflict with general enactments, the Government will not query a Byelaw as it considers that the Local Authority is well placed to determine how it wishes to proceed.
- (f) The Government intends to specify a six month time period, beginning at the end of the Public Consultation Period, during which an Authority must take a decision on whether to proceed with making a Byelaw or not. This is to ensure that Byelaws are made efficiently and effectively and to avoid delay.
- (g) The Government recognises that the majority of Local Authorities are in favour of enforcement of Byelaws through the mechanism of Fixed Penalty Notices (FPN's) as an alternative to enforcement through the Magistrates' Courts. The Government also believes that in some circumstances (e.g. for serious or repeat offences) it may be appropriate to enforce through the Magistrates' Courts.
- (h) The Government intends to issue guidance as to who will be able to issue FPN's and guidance on the type and extent of training that Authorities may wish to provide for Officers before they are authorised to issue FPN's.
- (i) It is also intended that procedural guidance will set out good practice on the desirability of using FPN receipts for the purpose of combating relevant nuisance.
- (j) It is intended that Byelaws about local nature reserves will also be enforced through FPN's.
- (k) The Government proposes to enable Authorities to set the level of FPN's at between £50 and £80 as set out in the Consultation Paper.

The Government proposes to review the level of penalty on an ad hoc basis.

3.0 RECOMMENDATION

It is recommended that the Government's response to the consultation on the discussion paper "The Making and Enforcement of Byelaws" be noted.