STATUTORY INSTRUMENTS

2016 No. 165

LOCAL GOVERNMENT, ENGLAND

The Byelaws (Alternative Procedure) (England) Regulations 2016

Made - - - - 11th February 2016

Coming into force in accordance with regulation 1

A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 236A(5) of the Local Government Act 1972(**1**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 236A(1) to (4) of the Local Government Act 1972.

PART 1

General provisions

Citation, commencement and application

1.—(1) These Regulations may be cited as the Byelaws (Alternative Procedure) (England) Regulations 2016 and come into force twenty one days after the day on which they are made.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

"the 1972 Act" means the Local Government Act 1972;

"enactment" includes a local and personal Act, a private Act and any subordinate legislation within the meaning of the Interpretation Act 1978(**2**);

"minor modification" is any modification which does not bring any new activity into the scope of the proposed byelaw or increase the scope of any prohibition or restriction in relation to an activity;

(**1**) 1972 c. 70. Section 236A was inserted by section 129(1) and (3) of the Local Government and Public Involvement in Health Act 2007 (c. 28).
(**2**) 1978 c. 30; see section 21(1).

"regulatory burden" includes—

(a) a financial cost;

(b) an administrative inconvenience;

(c) an obstacle to efficiency, productivity or profitability;

(d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity;

"relevant authority" means the byelaw-making authority listed in column (4) of the Table in Schedule 1 to these Regulations in relation to the description of a byelaw specified in column (1) of that Table.

PART 2

Prescribed classes of byelaws

Prescribed classes of byelaws

3. Each class of byelaws—

(a) numbered and described in an entry in column (1) of the Table in Schedule 1 to these Regulations;

(b) made under the enactment and section specified in the corresponding entries in columns (2) and (3) of the Table; and

(c) made by an authority of a description specified in the corresponding entry in column (4) of the Table,

is prescribed for the purposes of section 236A(1)(a) of the 1972 Act (alternative procedure for certain byelaws).

PART 3

Alternative procedure for making prescribed classes of byelaws

Application of Part 3

4.—(1) Subject to paragraph (2) and regulation 19, this Part applies in relation to byelaws of a class prescribed by regulation 3.

(2) This Part does not apply in relation to byelaws of a class prescribed by regulation 3 which have been made to revoke other byelaws of a class prescribed by regulation 3 and which have no other purpose.

Byelaw proposal: assessment and consultation

5.—(1) A relevant authority may prepare a scheme to make a byelaw of a class specified in regulation 4(1).

(2) In preparing a scheme under paragraph (1), the relevant authority must—

(a) prepare a draft of the proposed byelaw;

(b) carry out an assessment of whether the regulatory burden imposed by the proposed byelaw is proportionate, which must include, but need not be limited to—

(i) identification of the objective which the proposed byelaw is seeking to secure;

(ii) whether the objective intended to be secured by the proposed byelaw could be satisfactorily secured by alternative means;

(iii) the impact of the proposed byelaw on all persons identified by the authority as being potentially affected by it;

(iv) whether the result of the proposed byelaw would increase or lessen the regulatory burden on persons potentially affected by the proposed byelaw, insofar as possible expressing that increase or reduction in monetised form;

(v) how these alternative means and the proposed byelaw compare with carrying out no further action; and

(c) prepare a statement of the assessment.

(3) In carrying out an assessment under paragraph (2)(b) the relevant authority must consult with such persons as it considers are potentially affected by the proposed byelaw.

(4) In respect of a statement under paragraph (2)(c), the relevant authority must—

(a) record in the statement—

(i) its conclusions as to the impact of the proposed byelaw on persons potentially affected by the byelaw;

(ii) its conclusions as to whether the proposed byelaw results in an increase in the regulatory burden; and

(iii) in the event that the proposed byelaw results in an increase in the regulatory burden, the reasons why such an increase is considered to be proportionate and necessary;

(b) publish the statement on its website (if it has one); and

(c) publicise the statement in such manner as it considers is likely to bring the statement to the attention of persons who live in its area or may otherwise be affected.

Byelaw proposal: application for approval

6.—(1) A relevant authority may apply to the Secretary of State for approval of a scheme which has been prepared in accordance with regulation 5.

(2) An application under paragraph (1) must contain—

(a) the draft byelaw prepared under regulation 5(2)(a);

(b) the statement prepared under regulation 5(2)(c);

(c) a report—

(i) identifying the enactment under which the byelaw is proposed to be made;

(ii) confirming that the procedure for making the byelaw is that specified in these Regulations;

(iii) as to the purpose of and need for the byelaw, which must include, but need not be limited to the relevant matters;

(iv) the relevant authority's reasons for considering that the byelaw is reasonable in its proposed application, which must include, but need not be limited to why any sanction specified in the proposed byelaw is necessary and proportionate;

(v) explaining the extent (if any) to which any other enactment already fulfils the purpose identified under paragraph (iii);

(vi) where an enactment has been identified under paragraph (v), explaining why, notwithstanding that enactment, the relevant authority believes there is a need for the byelaw;

(vii) where paragraph (v) does not apply, that the byelaw does not conflict with any existing enactments;

(viii) as to whether the relevant authority has revoked or is revoking any byelaw;

(ix) as to whether the relevant authority intends to make use of any model byelaw and if so what (if any) adjustments to the model byelaw are proposed and confirmation that the relevant authority has followed the guidance accompanying the model byelaw;

(x) identifying, by reference to a map where necessary, the land to which the byelaw, if made, will apply;

(xi) of the extent of the consultation that has been undertaken and the result of that consultation; and

(xii) summarising any objections made in response to that consultation and the relevant authority's response to such objections, to include copies of all correspondence dealing with such objections.

(3) In this regulation—

"model byelaw" means a draft byelaw—

(a) published by the Department for Communities and Local Government(**3**); and

(b) which, at the time of its use by a relevant authority, the Department continues to promote, whether in the terms originally published or in terms substantially to the same effect; and

"relevant matters" means—

(a) the objective which the proposed byelaw is intended to address;

(b) the extent of such objective including its geographical extent;

(c) the measures, if any, the relevant authority has taken to address the objective;

(d) the relevant authority's reasons for considering why the proposed byelaw fulfils the necessary objective;

(e) confirmation that the proposed byelaw is not solely intended to protect persons from the consequences of their own action.

Byelaw proposal: application approval

7.—(1) The Secretary of State must respond in writing to an application made in accordance with regulation 6 during the period of 30 days beginning with the date on which such application was submitted to the Secretary of State.

(2) In issuing a response under paragraph (1) the Secretary of State may—

(a) give leave to the authority to make the byelaw;

(b) send an acknowledgement to the authority stating that the Secretary of State will issue a substantive response as soon as practicable; or

(c) refuse to give leave to the authority to make the byelaw.

Publication of proposals

8.—(1) This regulation applies if—

(a) the relevant authority has satisfied the requirements of regulations 5 and 6;

(**3**) Model Byelaws were published by the Department for Communities and Local Government on 8th February 2013; they are available at https://www.gov.uk/government/collections/model-byelaws or from the Byelaws Team, DCLG, 2 Marsham Street, London SW1P 4DF.

(b) the Secretary of State has given leave to make the byelaw in accordance with regulation 7(2); and

(c) the relevant authority decides to propose the making of the byelaw.

(2) Where this regulation applies, the relevant authority must—

(a) publish a notice of the proposal on its website (if any) and in one or more local newspapers circulating in the area in which is situated the land in respect of which the byelaw, if made, will apply;

(b) publicise that notice in such other manner as it sees fit.

(3) The notice referred to in paragraph (2) must—

(a) identify the land to which the byelaw, if made, will apply;

(b) give a summary of its intended effect;

(c) specify—

(i) the principal office of the authority at which a draft of the byelaw, the statement prepared under regulation 5(2)(c) and the report prepared under regulation 6(2)(c) may be inspected free of charge at all reasonable hours; and

(ii) the address from which a copy of those documents may be obtained on request;

(d) state the period, being not less than 28 days beginning with the publication of the notice, during which the documents referred to in sub-paragraph (c)(i) may be inspected and written representations made; and

(e) state the postal address and, if any, the e-mail address, to which representations may be sent.

(4) If a person requests copies of the documents referred to in paragraph (3)(c)(i), the relevant authority must provide a copy of the documents requested, on payment of such reasonable charge as the relevant authority may determine.

(5) In paragraph (3)(a) "land" includes any premises on the land to which the byelaw, if made, will apply.

Consideration of representations

9. Where the relevant authority receives any written representations within the period specified in the notice published under regulation 8, it must consider them before making any decision in accordance with regulation 10.

Decision

10. No later than six months after the expiration of the period specified in the notice published under regulation 8, the relevant authority must decide—

(a) to make the proposed byelaw without modification;

(b) to make the proposed byelaw with minor modification; or

(c) not to make the proposed byelaw.

Making the byelaw

11.—(1) The byelaw must be made under the common seal of the relevant authority or, in the case of a byelaw made by a parish council not having a seal, under the hands and seals of two members of the council.