Draft Regulations laid before Parliament under section 236A(5) of the Local Government Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

LOCAL GOVERNMENT, ENGLAND

The Byelaws (Alternative Procedure) (England) Regulations 2015

Made - - - - ***

Coming into force - - *1st October 2015*

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. These Regulations may be cited as the Byelaws (Alternative Procedure) (England) Regulations 2015 and come into force on 1st October 2015.

2. These Regulations apply in relation to England only.

Interpretation

3. 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**);

(**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).

"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;

"regulatory burden" includes—

(a) a financial cost;

(b) an administrative inconvenience;

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

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

"relevant authority", in relation to considering a proposal to make byelaws of the description specified in column (1) of the Table in Schedule 1 to these Regulations, or proposing the making of such byelaws, means the byelaw-making authority listed in column (4) of that Table by which the proposal is being considered or made.

PART 2

Prescribed classes of byelaws

Prescribed classes of byelaws

4. 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.

PART 3

Alternative procedure for prescribed classes of byelaws

Application of Part 3

5.—(1) Subject to paragraph (2), this Part applies in relation to byelaws of a class prescribed by regulation 4 which are made on or after the date these Regulations come into force.

(2) This Part does not apply to a byelaw of a class prescribed by regulation 4 which has been made to revoke another byelaw and which has no other purpose.

Byelaw proposal: assessment and consultation

6.—(1) Any relevant authority may prepare a scheme to make byelaws of the class specified in regulation 5(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) identification of any alternative means for securing the objective intended to be secured by the proposed byelaw ;

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

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

(v) 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;

(vi) 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 overall regulatory burden; and

(iii) in the event that the proposed byelaw results in an increase in the overall 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

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

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

(a) the draft byelaw prepared under regulation 6(2)(a);

(b) the statement prepared under regulation 6(2)(c);

(c) a report—

(i) identifying the enactment under which it is proposed that the byelaw will be made;

(ii) confirming that the procedure for making the byelaws is that specified in the Byelaws (Alternative Procedure) (England) Regulations 2015;

(iii) as to the purpose and need for the byelaws, which must include, but need not be limited to—

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

(bb) the location and extent of such objective;

(cc) the measures, if any, the relevant authority have taken to address the objective;

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

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

(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 the 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 sub-paragraph (iii);

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

(vii) where sub-paragraph (v) does not apply, that the byelaws do not conflict with any existing enactments;

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

(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 byelaws, if made, will apply;

(xi) of the extent of the consultations that have been undertaken and the results of those consultations; and

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

(3) In paragraph (2)viii), "model byelaw" means a draft byelaw—

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

(b) which, at the time of its use by a relevant authority, the department in question or any other Department of State continues to promote, whether in the terms originally published or in terms substantially to the same effect.

Byelaw proposal: application approval

8.—(1) The Secretary of State must respond in writing to an application made in compliance with regulation 7 during the period of 31 days beginning with the date on which such application was submitted to the Secretary of State.

(2) In issuing a response under sub-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 the date on which the Secretary of State will issue a substantive response to the application; or

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

Publication of proposals

9.—(1) If, having satisfied the requirements of regulations 6 and 7, and the Secretary of State has given leave to make the byelaw in accordance with regulation 8(2), the relevant authority decides to propose the making of the byelaw, it must—

(a) publish a notice of that proposal—

(i) on its website (if any); and

(ii) in one or more local newspapers circulating in the area to which the byelaw, if made, will apply;

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

(2) The notice referred to in paragraph (1) must—

(a) contain the information specified in regulation 7(2);

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

(c) give a summary of their intended effect;

(d) specify—

(i) the principal office of the authority at which a draft of the byelaw, the statement prepared under regulation 6(2)(b) and the report prepared under regulation 7(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;

(e) state the period, being not less than 28 days beginning with the publication of the notice, during which the documents referred to in paragraph (2)(d)(i) may be inspected and written representations made; and

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

(3) If a person requests copies of the documents referred to at paragraph (2)(d)(i), the relevant authority must provide a copy of the documents requested, on payment of such reasonable charge as the relevant authority may determine.

Consideration of representations

10. Where the relevant authority receive any written representations within the period specified in the notice published under regulation 9, they must consider them before making any decision in accordance with regulation 11.

Making the byelaws

11.—(1) No later than six months after the expiration of the period specified in the notice published under regulation 9, the relevant authority must decide—

(a) to make the byelaw with or without modification; or

(b) not to make the byelaw.

(2) Where the relevant authority decides to modify the proposed byelaw in a respect which appears to the relevant authority to be other than a minor modification, as soon as practicable after taking that decision, the authority must—

(a) modify the byelaw proposed under regulation 9;

(b) publish, in the manner specified in regulation 9(1), a notice that—

(i) states the enactment under which the byelaw as modified are proposed to be made;

(ii) identifies the land to which the byelaw, if made, will apply;