

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^(a).

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^(b);

“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;

^(a) 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).

^(b) 1978 c. 30; see section 21(1).

- (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^(a); 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;
 - (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—

(a) 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.

- (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.

(2) If no date is specified in the byelaw as that on which it comes into force, it comes into force on the 30th day after that on which it is made.

Publicity after making the byelaw

12.—(1) Not less than seven days before the day on which the byelaw comes into force, the relevant authority must—

- (a) deposit a copy of the byelaw at its principal office;
- (b) where practicable, place signs summarising the byelaw in conspicuous positions on or near the land in respect of which it applies;
- (c) publish on its website (if any) a notice—
 - (i) stating that the byelaw has been made;
 - (ii) specifying the date on which it comes into force; and
 - (iii) specifying the place at which it may be inspected and copies obtained;
- (d) publicise the byelaw in such manner as it considers fit.

(2) A district council must send a copy of its byelaw to the proper officer of—

- (a) the county council (if any); and

(b) every parish council that includes land in respect of which the byelaw applies or, where a parish does not have a parish council, to the chairman of the parish meeting, and the proper officer of the county council or parish council or the chairman of the parish meeting must ensure that a copy is deposited with the public documents of the county or parish, as the case may be.

(3) A London borough council must send a copy of its byelaw to the proper officer of every parish council (if any) that includes land in respect of which the byelaw applies or, where a parish does not have a parish council, to the chairman of the parish meeting, and the proper officer of the parish council or the chairman of the parish meeting must ensure that a copy is deposited with the public documents of the parish.

(4) A parish council must send a copy of its byelaw to the proper officer of the district council, and the proper officer of the district council must ensure that a copy is deposited with the public documents of the district.

(5) A county council must send a copy of its byelaw to the proper officer of every district council in the county (if any) and the proper officer of the district council must ensure that a copy is deposited with the public documents of the district.

(6) The relevant authority must provide a copy of the byelaw to any person on request on payment of such reasonable charge as the relevant authority may determine.

(7) A copy of the byelaw deposited in accordance with paragraph (2), (3), (4) and (5) must at all reasonable hours be open to public inspection without payment.

PART 4

Alternative procedure for revocation of prescribed classes of byelaws

Application of Part 4

13. Subject to regulation 19, this Part applies in relation to byelaws of a class prescribed by regulation 3 which are made to revoke other byelaws of a class prescribed by regulation 3 (whether those other byelaws were made before, on or after the date on which these Regulations come into force) and which have no other purpose.

Revocation proposal: assessment and consultation

14.—(1) A relevant authority may prepare a scheme to make a byelaw to which this Part applies.

(2) Regulation 5(2)(a) and (b)(i), (ii), (iii) and (v) applies to the making of such a scheme.

(3) If, having prepared a scheme under paragraph (1), the relevant authority decides to propose the making of the byelaw, it must—

- (a) publish a notice of that 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; and
- (c) state the period, being not less than 28 days beginning with the publication of the notice, during which the a draft of the byelaw may be inspected and written representations made.

(4) Where the relevant authority receives any written representations within the period specified in the notice published under paragraph (3), the relevant authority must consider them before making any decision in accordance with regulation 15.

Revocation proposal: decision

15. No later than six months after the expiration of the period specified in the notice published under regulation 14, 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.

Revocation: making of byelaw

16.—(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.

(2) A byelaw made under this Part comes into force on the 30th day after that on which it is made.

Revocation: publicity after making the byelaw

17.—(1) Not less than seven days before the date on which the byelaw comes into force, the relevant authority must—

- (a) deposit a copy of the byelaw at its principal office;
- (b) publish on its website (if any) a notice—
 - (i) stating that the byelaw has been made;
 - (ii) specifying the date on which it comes into force; and
 - (iii) specifying the place at which it may be inspected and copies obtained; and
- (c) publicise the byelaw in such other manner as it considers fit.

(2) The relevant authority must provide a copy of the byelaw to any person on request on payment of such reasonable charge as the relevant authority may determine.

(3) The relevant authority must remove all signs which summarise the effect of a byelaw revoked under this Part, as soon as reasonably practicable after the date on which the byelaw is revoked.

(4) Regulation 12(2) to (7) applies in relation to a byelaw made under this Part as it applies in relation to a byelaw made under Part 3.

PART 5

Consequential and transitional provision

Consequential amendments

18. The enactments specified in Schedule 2 to these Regulations are amended in accordance with that Schedule.

Transitional provision

19. Section 236 of the 1972 Act^(a) continues to apply in relation to a byelaw of a class prescribed by regulation 3 which is made by a relevant authority before the date on which these Regulations come into force.

(a) Section 236 was amended by section 129(1) and (2) of the Local Government and Public Involvement in Health Act 2007(c. 28).

Signed by authority of the Secretary of State for Communities and Local Government

Marcus Jones

Parliamentary Under Secretary of State

Department for Communities and Local Government

11th February 2016

SCHEDULE 1

Regulations 2 and 3

Prescribed classes of byelaws

The Table

(1) <i>Description</i>	(2) <i>Enactment</i>	(3) <i>Section</i>	(4) <i>Byelaw making authority under s.236A</i>
1. Byelaws relating to the regulation of public walks and pleasure grounds.	Public Health Act 1875 (c. 55).	164	A district council, a parish council and a London borough council.
2. Byelaws relating to the regulation of open spaces and burial grounds.	Open Spaces Act 1906 (c. 25).	12	A county council, a district council and a parish council.
3. Byelaws relating to the regulation of open spaces and burial grounds.	Open Spaces Act 1906 (c. 25).	15	A county council, a district council and a parish council.
4. Byelaws relating to the prevention of danger, obstruction or annoyance to persons using the sea-shore.	Public Health Acts Amendment Act 1907 (c. 53).	82	A district council and a London borough council.
5. Byelaws relating to the prevention of danger, obstruction, or annoyance to persons using esplanades or promenades.	Public Health Acts Amendment Act 1907 (c. 53).	83	A district council and a London borough council.
6. Byelaws relating to the regulation of public bathing.	Public Health Act 1936 (c. 49).	231	A district council and a London borough council.
7. Byelaws relating to the regulation of pleasure fairs and roller skating rinks.	Public Health Act 1961 (c. 64).	75	A district council and a London borough council.
8. Byelaws relating to the regulation of hairdressers and barbers.	Public Health Act 1961 (c. 64).	77	A district council and a London borough council.
9. Byelaws relating to good rule and government and the prevention and suppression of nuisances.	Local Government Act 1972 (c. 70).	235	A district council and a London borough council.
10. Byelaws relating to the regulation of market places.	Food Act 1984 (c. 30).	60	A district council, a London borough council and a parish council.
11. Revocation of byelaws falling within any of the above	Local Government Act 1972 (c. 70).	236B	A county council, a district council, a

entries.			London borough council and a parish council.
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SCHEDULE 2

Regulation 18

Amendment of enactments

Public Health Act 1875

1.—(1) Section 184 of the Public Health Act 1875 (confirmation of byelaws)(a) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that provision insert—

“(2) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

Open Spaces Act 1906

2. In section 15 of the Open Spaces Act 1906 (byelaws)(b), in subsection (2) after “England” insert “other than byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972”.

Public Health Acts Amendment Act 1907

3.—(1) Section 9 of the Public Health Acts Amendment Act 1907 (byelaws)(c) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) After that provision insert—

“(2) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

Public Health Act 1961

4.—(1) The Public Health Act 1961 is amended as follows.

(2) In section 75 (byelaws as to pleasure fairs and roller skating rinks)(d), after subsection (8) insert—

“(8A) Subsection (8) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

(3) In section 77 (byelaws as to hairdressers and barbers), after subsection (3), insert—

“(4) Subsection (3) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

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- (a) Section 184 was repealed except so far as it may be material for the purposes of any un-repealed enactment in the Public Health Act 1875 (c. 55) or any Act directed to be construed therewith by the Public Health Act 1936 (c. 49), section 346, Schedule 3, Part 1, paragraph 2.
- (b) Section 15 was modified by the Environment Act 1995 (c. 25), section 70, Schedule 9, paragraph 2, so that references to a local authority include references to National Park authorities.
- (c) Section 9 was amended by section 180 of the Local Government Act 1972 (c. 70).
- (d) Section 75 was amended by section 22 of and Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 (c. 57).

Local Government Act 1972

5.—(1) The Local Government Act 1972 is amended as follows.

(2) In section 235 (power of councils to make byelaws for good rule and government and suppression of nuisances), after subsection (2) insert—

“(2A) Subsection (2) does not apply to byelaws of a class prescribed by regulations under section 236A(1).”

(3) In section 236B (revocation of byelaws)(a), after subsection (4) insert—

“(4A) Subsection (4)(b) does not apply to byelaws of a class prescribed by regulations under section 236A(1).”

Food Act 1984

6. In section 121 of the Food Act 1984 (byelaws), after subsection (1) insert—

“(1A) Subsection (1) does not apply to byelaws of a class prescribed by regulations under section 236A(1) of the Local Government Act 1972.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe classes of byelaws to which section 236 of the Local Government Act 1972 does not apply and make provision about the procedure (the alternative procedure) for the making, coming into force and revocation of such byelaws. In particular the alternative procedure removes the requirement that byelaws must be confirmed by the Secretary of State.

Regulation 3 prescribes the classes of byelaws to which section 236 of the Act does not apply. Each class of byelaws is numbered and described in an entry in column 1 of the Table in Schedule 1 to these Regulations, made under the enactment and section in the corresponding entries in columns 2 and 3 respectively and by an authority of a description specified in the corresponding entry in column 4.

Regulation 4 provides that the alternative procedure specified in regulations 5 to 12 applies only to the classes of byelaws prescribed by regulation 3 made on or after the date these Regulations come into force. Regulation 4 also excludes certain requirements specified in the alternative procedure where the byelaw being made has no other purpose than to revoke another byelaw.

Regulations 5 to 12 specify the alternative procedure for the making and coming into force of byelaws.

Regulations 13 to 17 specify the alternative procedure for the revocation of byelaws of a class prescribed by regulation 3.

Regulation 18 makes provision for amendments to enactments consequential on the making of these Regulations. The amendments are set out in Schedule 2. Regulation 19 provides for section 236 of the Act to continue to apply in relation to byelaws of a class prescribed by regulation 3 made before the coming into force of these Regulations. The effect is that such byelaws do not come into force unless confirmed by the Secretary of State.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

(a) Section 236B was inserted by section 134 of the Local Government and Public Involvement in Health Act 2007 (c. 28).

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